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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

Poor Persons Procedure.

WE PRINTED LAST week, *ante*, p. 459, the Report of the Special Committee on Poor Persons Procedure, which is to be considered at the Special General Meeting of the Law Society next Friday. The present position appears to be due very largely to the reluctance of the authorities—that is, the Lord Chancellor, the Lord Chief Justice, and the President—to give full effect to s. 1 of the Administration of Justice Act, 1920. That section, indeed, does not allow of the trial of divorce cases in the County Court, but it allows of their trial at any assize town by Commissioners of Assize, and under s. 16 of the County Courts Act, 1888, a county court judge may be appointed a commissioner. But no action was taken at all under the Act for some eighteen months after it had been passed, and then the facilities given for the trial of divorce cases in the provinces were limited. The Special Committee recommend that all assize towns should be included for this purpose, and further that poor persons' undefended cases should be taken in the county court. There is the difficulty as to the latter course in that the jurisdiction of the county court once admitted, there can be no ground for restricting it to undefended cases. It is unfortunate that the poor persons' procedure has proved to be almost exclusively concerned with divorce, for this is a matter which the ordinary practitioner seldom has occasion to take up, and as the Report suggests, he may have his own reasons for not doing so. Hence the failure of the present system cannot be put down to any reluctance of the profession to render help.

The Budget.

THE CHANCELLOR of the Exchequer's Budget proposals which were laid before the House of Commons on Monday do not involve the extensive legislative changes of last year's Budget. There is no wholesale shifting of taxpayers from one schedule

to another, as when last year all employees under Sched. D were transferred to Sched. E, and so lost the benefit of the three years' average; and there is no further proposal for interfering with schemes for reducing, or varying the incidence of, income tax by a judicious arrangement of the family income; and there is no proposal as regards the profits of companies like that of last year, designed in a limited class of cases to bring undistributed profits into charge for super-tax. The reduction of the income tax from 5s. to 4s. 6d. is welcome as far as it goes. Whether a heavy income tax is, as the Daily Press puts it, bad for trade, or whether, as we imagine is the real meaning, it is oppressive to the individual, we need offer no opinion. And whether beer should have been preferred to a reduction to sugar, it is not for us to say. From the legal point of view, the Budget is quite uninteresting, but Mr. BALDWIN intimated that some of the recommendations of the Income Tax Commission will find a place in the Finance Bill, and these probably will deal with the question of income tax evasion. The sums lost in this way can only be guessed at. The official guess to the Commission was five to ten million pounds. The Corporation Profits Tax is, it is now admitted, a temporary expedient, and, since it is only an additional income tax on a special class of taxpayers, it was necessarily so. The 1s. in the £ is reduced to 6d. as from 30th June next, and the rest should be taken off in the following year. There are suggestions for a tax on bets, and a Select Committee is to be set up to consider the subject, but it will be time enough to deal with its legal aspects when there is any chance of the prospect materializing; as to its moral aspects, we need not anticipate the protests with which it will be met, and which, indeed, have already found strong expression in the House of Commons.

The late Judge Sherston Baker.

SIR GEORGE SHERSTON BAKER, who died a fortnight ago at the age of seventy-seven, had been a County Court Judge since 1901. As a lawyer he was remarkable for his learning and scholarship qualities, which unfortunately seldom find full scope on the County Court Bench. He was an authority on International Law, having edited a number of editions of "Halleck," a classical American treatise not quite so much used in England. HALLECK, by the way, is a remarkable instance of a man, not himself a lawyer, who has written a legal treatise of the first order. He served as a federal general in the Civil War of 1861-65, and was for a short time one of ABRAHAM LINCOLN'S Commanders-in-Chief; like some half-a-dozen predecessors in that onerous post he was shelved by the unsparing rigour of LINCOLN, who got rid of every Commander-in-Chief so soon as he allowed LEE to defeat him in a pitched battle; he was succeeded by GRANT, who lost no battles. HALLECK, in his retirement, solaced himself by composing his treatise on International Law, which has the remarkable merit of giving practical illustrations of the application of the Laws of War as they appeared to one who had to observe them. In addition to his editions of "Halleck," the late Judge wrote learned treatises on the Law of Quarantine, and the office of Vice-Admiral of the Coast, as well as some smaller text-books. His decease deprives the County Court of the services of a Judge whose decisions always commanded exceptional respect from Bench and Bar alike.

Actions against Government Departments.

WE NOTICED last week the observations made in the Court of Appeal in *The Marshall Shipping Co. Ltd.* v. *Board of Trade, Times*, 12th inst., with respect to procedure against Government Departments, and we inquired what the Crown Procedure Committee was doing about the matter. To that question, of course, we expect no answer, but the Solicitor-General said in Parliament on Wednesday that he would call the attention of the Committee to the judgment in the case, so the Committee is still in being. In fact, the Committee is fifteen months old, and so far nothing has been heard of it. It was appointed in January, 1922, and consisted of seventeen members, but, as we pointed out at the time, it was a Committee composed very largely of Crown lawyers. True, there were a few judges, but two of these had been Crown lawyers; and there were members, like Sir WILLES CHITTY, who, though in an official position, gave the Committee the benefit of great learning and experience. With the names of a few we are not familiar, but there was at least one quite unofficial member, Sir WALTER TROWER. There may have been others.

The Difficulties of Crown Procedure.

SO THIS COMMITTEE has sat for fifteen months on a matter of pressing importance, and apparently nothing has been done. Of course, the subject is complicated and difficult, as a glance at "Robertson on Civil Proceedings by and against the Crown" will show; and its difficulty has not been lessened by recent decisions such as *Graham* v. *Commissioners of Public Works*, 1901, 2 K.B. 731, where an action was allowed, and *Bombay &c. Co.* v. *MacLay*, 1902, 3 K.B. 402, where it was disallowed. It was disallowed also in the recent cases of *Pratt & Co. Ltd.* v. *Minister of Munitions*, 1922, W.N. 261 (though on special grounds) and *Rowland* v. *Air Council*, 1923, W.N. 72. And, in fact, when a claim is to be made against the Government there is usually great doubt as to the appropriate procedure. Till recently the claimant had at least the benefit of the rule that the Crown neither pays nor receives costs. But this has been largely done away with by *R.* v. *Special Commissioners*, 1920, 1 K.B. 26, and by the decision of EVE, J., as to costs in *Pratt's Case*, 1922, W.N. 261. In *Rowland* v. *The Air Council*, 1922, W.N. 72, RUSSELL, J., adhered to the rule and suggested that the matter had not been fully argued in *Pratt's Case*. But the suggestion was, we have reason to believe, unfounded, and there is, in fact, a difference of judicial opinion. And now we wonder if the Crown Lawyers' Committee is going to do anything about the matter.

Workmen's Compensation and Lump Sums.

WHERE BRITISH Statutes deal with a wholly novel subject-matter, such as Workmen's Compensation, it is usual to apply them to both England and Scotland, with only such alterations in procedure as are necessary for the Scottish Courts. The result is that two sets of decisions of Courts of equal authority grow up, the English Court of Appeal and the Scots Inner House of the Court of Session. These sometimes differ in the view they take of the general policy of the statute, in which case conflicting decisions occur in the two countries until the House of Lords finally reconciles both in some case which reaches that final tribunal of appeal. Although Scots judgments are not binding authorities in England, the view of the Scots Court of Session necessarily commands great weight here, so that the existence of two conflicting interpretations on any important point always creates uncertainty in the mind of the experienced English practitioner; till the House of Lords has had the case before it, he never feels sure which line of cases will prevail. This is admirably illustrated by *Russell* v. *Rudd, ante*, p. 421. Here the question arose whether, apart altogether from the special provisions of the Workmen's Compensation Act, 1906, which allows of the redemption of weekly payments under an award by payment of a lump sum, the workman and employer can at common law agree to settle a claim made by the former and not yet decided by an award of the Judge, by the acceptance of a lump sum in settlement of all claim. Of course, such a compromise of litigation is not possible without the consent of the court in the case of an infant, but a compromise of this kind is always possible on the part of a claimant of full age in the case of ordinary suits. And so *primâ facie* there seems no reason why it should not also be possible for a similar claimant to accept a lump sum in settlement of his statutory claims under the Workmen's Compensation Act. But s. 3 (1) in this Act expressly enacts that the basis of compensation, contemplated in the statute, shall apply "notwithstanding any contract to the contrary," and the question therefore arises what these words include. Do they

refer only to an attempt of the parties to "contract out" of the Act after award, by the workman's acceptance of a lump sum in redemption of the weekly payments awarded other than the amount provided for by Sched. II, para. 6 of the Statute? Or do they refer also to settlement, out of court, of a case not yet tried? On this point the Scots Courts have held, following a *dictum* of Lord WRENBURY, in *Clawley* v. *Carlton Main Colliery Company, Ltd.*, 1918, A.C. 744, at p. 758, that such a compromise amounts to "contracting out" and therefore is not admissible. On the other hand, the opposite view has been expressed by the English Court of Appeal in a long series of cases. Finally in *Russell* v. *Rudd, supra*, the House of Lords has now followed the Scots precedents and decided that a settlement of this kind is *ultra vires* and invalid; therefore the Registrar of the County Court cannot file as an "agreement" under the statute, Sched. I (17) and Sched. II (9) and (10), any settlement *before award* by which the workman agrees to accept a "lump sum" in settlement of all his claim. Of course, after award, redemption by a lump sum, if approved by the Judge, can be registered as an agreement.

The Form of Oath in Reply to Interrogatories.

A NOVEL POINT of procedure came before the Court of Appeal in *Crosland and Douglas* v. *Morning Post Newspaper, Times*, 17th April. The defendant newspaper had printed a letter from a correspondent who incidentally expressed a hope that two journalists, the plaintiffs CROSLAND and DOUGLAS, would henceforth refrain from making what he considered to be vile attacks on Jews. The plaintiffs at once sued the newspaper for libel, and were met with the usual defences, including that of "fair comment." Then came what is nowadays the common form practice in libel pleadings, although prior to the present century it was almost unknown; the defendants had justified their correspondent's comments by particular passages written by the plaintiffs and relied on as "attacks on the Jews," and now they delivered interrogatories requiring the plaintiffs to state on oath whether the attacks were true or false? One of these passages, too long for quotation here, had suggested that a Cabinet Minister [the innuendo evidently being that he was of the Jewish faith] had used the Admiralty report of the Battle of Jutland as a means of speculating on the Stock Exchange. Another suggested that Lord KITCHENER had been drowned because he had the courage to say that the War Office was full of Jews. The plaintiffs were interrogated as to their belief in the accuracy of the facts comprised in these statements. The reply to interrogatories was that the statements were true according to "the firm belief" of the plaintiff interrogated. Of course, the usual form is "according to the best knowledge, information, and belief" of the deponent. The Master struck out the reply as wrong in form; the judge in chambers allowed it as substantially a sufficient answer; and now the Court of Appeal has disallowed it again. The point seems trivial, but the Court of Appeal took the common-sense view that, if a deponent objects to saying that something is true "according to his knowledge, information, and belief," and will only say it is true "according to his firm belief," his reply is highly ambiguous, and necessarily leaves the interrogator in doubt as to whether the statement was ever based on any "knowledge and information." The full form of reply is therefore desirable. Readers of SCOTT'S "Old Mortality" will recall the reply of CUDDIE HEADRIGG, the covenanting ploughman, when asked by the Scots Privy Council whether he had been present at the battle of Bothwell Bridge: "A body canna recall preceesely whaur he may hae been all the days o' his life." But LAUDERDALE and DALZELL would not accept that as a sufficient reply, and neither will a modern court.

The Meaning of Self-contained Flats.

THE GROWING tendency of our courts to cut down the application of the Rent Restriction Act is well illustrated by *Smith* v. *Prime, Times*, 18th inst., where Mr. Justice ROCHE had to consider a point on which he could find no authority. It is common knowledge that s. 12 (9) of the Act of 1920 excludes from statutory protection "any dwelling-house which has been since that date . . . *bonâ fide* reconstructed by way of conversion into two or more separate and self-contained flats or tenements." In this case, *supra*, a house of which the pre-war rental was £40, had been re-let as two flats on a much higher basis of rental. The landlord had changed one of the upper rooms into a kitchen for the upper flat, and had put in "heating and cooking apparatus"; we presume that the learned judge was referring to what is popularly known as a "gas-cooker"; he had not put up any partitions separating either flat from the other, and the tenants used in common the staircases, corridors, bathroom, and sanitary accommodation. In popular language such flats would never be described as "self-contained," and it is difficult to believe that the Legislature when it uses the term "reconstructed" had in mind the mere addition of cooking arrangements in one of the two flats. The learned judge, however, took a very ingenious view. First of all, he considered that the addition of separate gas-heating-and-cooking pipes amounted to "*bonâ fide* reconstruction." Secondly, he found that the transfer of one room in the upper flat from the office of bedroom to that of kitchen amounted to a "conversion" of the house into two "separate" flats, the test of "separateness" being the existence of an independent kitchen in a dwelling-house. And lastly, he held that a "self-contained" flat means, not one which has all its essential domestic offices within the ambit of its own precincts, but one which has all its rooms together within one ambit; *e.g.*, a flat consisting of one room on one floor and one on another floor would not be self-contained. This is extremely ingenious, but it is difficult to accept the learned judge's interpretation of any of the three terms used in s. 12 (9), namely, "reconstruction," "conversion," and "self-contained," as otherwise than a serious straining of the language of the statute in its ordinary acceptation. How far the decision can be appealed with hope of success it is difficult to say since the learned judge expressly stated that his findings were "findings of fact"; and the Court of Appeal might hold that he was wrong in his interpretation of the statute without feeling at liberty to reverse him on the facts.

Sunday Observance and the Sale of Confectionery.

AN INSTANCE OF legislation which has to some extent fallen into desuetude, has just come into prominence in the case of *London County Council* v. *Gainsborough, Times*, 14th inst., where it has been decided that, for the purposes of the Shops (Early Closing) Act (1920) Amendment Act, 1921, the expression "week days other than Saturdays" does not include Sundays. In other words, although it cannot be denied that Sunday is a day of the week, it is not a week-day for the purposes of the most recent statute which fixes the hours during which fruit, table waters, sweets, chocolates, or other sugar confectionery or ice-cream may be sold to the public. In the previous statute, the Shops (Early Closing) Act, 1920, it was provided that "Every shop shall be closed for the serving of customers not later than eight o'clock in the evening on every day other than Saturday, and not later than nine o'clock in the evening on Saturday." It will be borne in mind that by the Sunday Observance Act, 1677, it is enacted that no person shall expose to sale any wares whatsoever upon the Lord's Day, on pain of forfeiture of the goods so exposed. The Court in the present case did not hesitate to regard the expression in the Act of 1920 "every day other than Saturday" as including Sundays. It will therefore be noticed that the effect of the Act of 1920 was to recognise the opening of shops on Sunday. The legislation on the matter at this stage, appearing, as it does, to provide that shops shall not be open at all on Sunday, while, at the same time, defining the hours during which they may be open on "every day other than Saturday" is somewhat bewildering. Is it not probable that the framers of the Act of 1921 realised this, and, taking it into consideration, deliberately departed from the phraseology of the statute of 1920 and did so, in a subtle manner, so as to avoid offending modern susceptibilities too directly? However many people there may have been in this country in 1677 who thought

fit to mould the Christian Sunday as far as possible on the lines of the Jewish Sabbath, the tendency of the present day clearly does not lie in that direction. A modern statute which too crudely emphasised the provisions of the Sunday Observance Act of 1677 relating to the sale of goods on that day might arouse considerable resentment.

Estoppel in Hire-Purchase Cases.

AN INGENIOUS attempt to apply the law of estoppel in a novel set of circumstances happily failed to convince the Divisional Court in *Jones Bros. (Holloway), Ltd.* v. *Woodhouse*, 1923, W.N. 48. Here goods were hired and held under a hire-purchase agreement. A judgment creditor of the hirer issued a writ of *fi-fa*, under which the sheriff seized and sold the goods comprised in the agreement, along with other goods belonging to the hirer. The owner of the goods therein comprised then sued the creditor for money had and received. Now, it is clear that the sheriff's seizure of these particular goods was an illegal execution, unless he could set up the doctrine known to every elementary student of the law, that their true owner had "stood by" and practically invited him to seize them. An attempt was therefore made to show that the owner, by letting out goods on hire-purchase and failing to notify the sheriff that the goods were his, had brought himself within the ambit of this familiar form of estoppel. The obvious reply is that he was under no duty to find out whether or not a writ of *fi-fa* is being issued against the debtor, nor can he know that the sheriff intended to seize these particular goods under it. Hence there is no estoppel, the sheriff's act is a technical trespass, and the creditor who asked him to levy execution is liable in *trover* to the owner of the goods. These goods having been seized and sold, he can follow the proceeds of the sale and recover them by an action for "Money Had and Received."

A Husband's Liability for his Wife's Frauds.

THE Court of Appeal have delivered two important decisions upon the difficult question of a husband's liability for his wife's fraud: *Edwards* v. *Porter and Wife* and *McNeall* v. *Hawes* (both reported elsewhere). In both cases the Court consisted of BANKES, SCRUTTON and YOUNGER, L.JJ., and in both cases the last-named Judge dissented. Each appeal was from a King's Bench Court, in the first case Mr. Justice BAILHACHE, and in the latter case Mr. Justice LUSH. In both cases the Court of Appeal took the view that the husband was not liable in the circumstances of the particular case: this involved the affirmation of Mr. Justice BAILHACHE'S judgment in *Edwards* v. *Porter*, *supra*, and the over-ruling of that of Mr. Justice LUSH in *McNeall* v. *Hawes*, *supra*. But the facts in the two cases were very different, and, indeed, raised an extremely doubtful issue in each case.

The general principle on which the Court proceeded is well settled. At Common Law, a married woman, like an infant, was liable for her torts—but this liability was imposed upon her husband, not herself personally. She was not liable for her contracts or debts, because she had not any capacity to contract; although Equity altered this to a limited degree so far as she had separate estate and contracted in respect of her separate estate, it did not recognize any legal capacity to contract, but it recognized an equity binding her separate estate in respect of such an obligation. The Married Women's Property Act, 1882, conferred on married women full right of property and contract, but omitted to remove the husband's liability for his wife's torts, so that since that date the following parties are liable for a married woman's torts committed during coverture; either (1) her husband and herself jointly, or (2) her husband alone or (3) herself alone. This rule was affirmed gradually in a series of cases, the final one of which, that of *Cuenod* v. *Leslie*, 1909, 1 K.B. 880, determined in so many words—per Lord COZENS-HARDY, at p. 885—that the Court must decide all questions of a husband's liability for his wife's torts in precisely "the same way as it would have been treated in the year 1880." The law is the same as it was before the Married Women's Property Act, so long as the wife remains technically a *feme coverte*.

Now prior to the Act of 1882 a difficulty had already arisen in the Courts. A wife is not liable for her contracts or debts. But what if she commits a tort in such a way as to impose a common law obligation in implied contract upon her? This may happen in many ways. A obtains from B £1,000 by means of a fraud: B can do one of two things, he can sue A in tort for damages for the common law tort known as "deceit," or he can sue B in contract on the eighth of the *Indebitatus Assumpsit* common counts, namely for "Money had and received by the defendant to the use of the plaintiff." Similar alternative remedies may exist where money has been obtained by extortion or converted by a bailee and in certain other cases. Now, in such cases, where a married woman obtains a fixed and certain sum of money by a fraud—for the "*Indebitatus*" actions only lie where the damages are freed or liquidated so as to amount to a "debt," as distinct from damages requiring ascertainment by a jury—one would expect *primâ facie* that the injured party could have sued her in tort, but could not have brought the "*indebitatus*" action in debt against her; of course, the defendant to the action would be the husband, not the wife personally. But this would have created a very intolerable hardship upon husbands, for it would have meant that, in every case in which the wife obtained unnecessary goods by representing that her husband had authorized her to order them, the unfortunate husband could have been sued in tort for her fraud. The defence to an action for his wife's debts, namely that the goods supplied were neither necessary nor authorized by him, would have disappeared; in every case a creditor could have sued the husband in the alternative, either *ex contractu* for his wife's debts, or *ex delicto* for her frauds. The Courts were not prepared to put in the hands of a married woman complete power to dispose of her husband's property as she pleased, which would have been in substance the effect of such a decision. They therefore had to find a way out.

The path of avoidance selected by the Common Law courts was very ingenious. They were not prepared to be frankly illogical and to make a definite exception to the rule that the husband was liable for his wife's torts. Neither could they pretend that common law deceit is not a fraud. They adopted, however, an ingenious formula which appeared to avoid doing either of those things. They distinguished between "naked" frauds, by which a wife obtains goods or money, and "frauds which are part and parcel of a contractual obligation"; for the former the husband is and still remains liable, for the latter he escapes liability. In practice, this simply means that where a wife, by fraud, induces the plaintiff to enter into a contract with her, usually a contract to supply goods or lend money, the tortious act—*i.e.*, the "fraud"—will be regarded as merely auxiliary to the formation of a contract, and the creditor will be limited, in his recourse against the husband, to an action for debt—which will fail unless the case otherwise falls within the husband's obligation to pay his wife's debts. It was Mr. Justice WILLES who, in *Wright* v. *Leonard*, 11 C.B.N.S. 258, first clearly explained this plan of escape. "As a general rule," he says, *ibid.*, p. 267, "a married woman is answerable for her wrongful acts, including frauds, and she may be sued in respect of such acts jointly with her husband, or separately if she survives him. The liability is hers, though, living with her husband, it must be enforced in an action against her and him, which, to charge him, must be brought to a conclusion during their joint lives. Inasmuch, however, as she is not liable in her contracts, the common law, in order effectually to prevent her from being indirectly made so liable under colour of a wrong, exempts her from liability, even for fraud, where it is directly connected with the contract with the wife, and is the means of effecting it, and parcel of the

same transaction. Such was the decision of the Court of Exchequer in *The Liverpool Adelphi Loan Association* v. *Fairhurst*, 9 Exch., 422, 429. This is the extreme length to which the exemption has been carried in any decided case; and we do not consider ourselves entitled, upon grounds of supposed policy only, to infringe further upon the general rule of law."

It will be seen from the above quotation from Mr. Justice WILLES' judgment that the exemption was originally created to save the wife from liability to be sued in her own person after her husband's death, and that it is of a very restricted character. It does not extend to all frauds by means of which the wife obtains money or goods, but only to those in which the fraud was "part and parcel" and a "necessary instrument" in the obtaining of a contract in the course of which the money or goods were transferred to the wife. It follows that the interpretation of the rule in any special or peculiar set of circumstances is extremely difficult. It was not any refusal to accept this rule, but differences as to its interpretation, that led to the disagreements of opinion among the learned judges, whether first instance or appellate, concerned in deciding the two cases on which we are commenting.

In *Edwards* v. *Porter and Wife*, *supra*, the facts were comparatively simple. The defendant's wife went to the plaintiffs and obtained a loan of £355 by pretending, quite falsely, that her husband had authorized her to borrow the money on his behalf to pay his rates and certain other charges: as a matter she wanted the money to effect an investment of her own with an unregistered moneylender. Mr. Justice BAILHACHE and the majority of the Court of Appeal took the view (1) that the wife had entered into a contract for money lent with the plaintiffs, (2) that she had obtained this contract by a false representation that she had her husband's authority to do so, and (3) that she was therefore personally liable for "breach of warranty of authority," but that her husband was not liable. This is rather an extension of the rule in *Wright* v. *Leonard*, *supra*; but probably one which will commend itself as highly desirable to most jurists who desire to see doubtful questions of law decided, not on narrow grounds of precedent, but in accordance with enlightened consideration of policy and principle.

McNeall v. *Hawes*, *supra*, was a more complicated and a much more difficult case. Here the husband was plaintiff: he claimed from the defendants the return of a life policy which his wife, without his authority, had deposited—through a third party—with the defendants, as security for a loan made at her request to that third party. The defendants counter-claimed, claiming that the husband was liable to them for damages sustained by his wife's fraudulent conversion of his property and fraudulent representations to themselves—which had been the inducement for the loan. Here the Court of Appeal, Lord Justice YOUNGER dissenting, overruled Mr. Justice LUSH, and held that the fraud relied on was so inextricably bound up with the loan as to be "part and parcel" of a contract so as to relieve the husband from liability. Here we must leave the matter, simply adding our hope that, at an early date, Parliament will see the way to abolish the now very anomalous liability of a husband for his wife's torts.

Variation of Settlements by the Divorce Court.

WHEN a married woman has under a will or settlement an interest which is subject to restraint upon anticipation the restraint attaches so long as and so often as she is under coverture: *Tullett* v. *Armstrong*, 1838, 1 Beav. 1. She may become entitled to such an interest during her spinsterhood, but when subsequently she marries, the restraint attaches for the first time: *ibid.* Even if, under the marriage settlement, she is entitled during the joint lives of the husband and herself to an interest which she is restrained from anticipating, and she divorces the husband, the restraint, although "suspended" (*Tullett* v. *Armstrong*, *ibid*, at p. 32), whilst she is discovert, arises upon a subsequent marriage: *Shafto* v. *Butler*, 1871, 40 L.J. Ch. 308. There was in that case a decree absolute, which in law puts an end to the coverture, but after a decree *nisi* the coverture continues until the decree absolute: *Sinclair* v. *Fell*, 1913, 1 Ch. 155.

Questions have sometimes arisen as to the power of the Court to make an order affecting the interest of a married woman restrained from anticipation. In *Robinson* v. *Wheelwright*, 1856, 6 De G.M. & G. 535, a legacy was given to a married woman upon condition that she gave up and conveyed property which under the will of another testator she was restrained from anticipating. She wanted the legacy and was ready to perform the condition, but it was held that the Court had no power to release the restraint although the release would have been for her benefit. This was the law until the Conveyancing Act, 1881, by s. 39, expressly gave power to the Court to bind the interest of a married woman in any property, if for her benefit and with her consent, notwithstanding the restraint. The jurisdiction thus given to the Court is exercised by the Chancery Division, *ibid*, 69 (i). Section 39 has been repealed and re-enacted in wider terms by s. 7 of the Conveyancing Act, 1911.

Jurisidiction similar to that expressly given to the Court in 1881 to over-ride the restraint is now, however, being commonly exercised by the Divorce Court under the provisions of the Matrimonial Causes Acts which came into operation many years before 1881. The provisions of these Acts under which the Divorce Court claims to act are provisions which enable the Court after a decree of nullity or dissolution of marriage to make an order that property settled on the marriage shall be applied for the benefit of the children of the marriage or of their parents: Matrimonial Causes Act, 1859, s. 5; Matrimonial Causes Act, 1878, s. 3. If the settled property is held in trust for a married woman with a restraint on anticipation the jurisdiction of the Court to remove the restraint would not be involved in making an order as to the application of that property when the marriage has been annulled or dissolved, for the restraint has no effect during discoverture. It sometimes happens, however, that before an order under the Matrimonial Causes Acts affecting such property is made another marriage has taken place, and that by reason of the existence of that coverture the restraint has again attached.

A case of this kind came before the Divorce Court in *Churchward* v. *Churchward*, 1910, P. 195. A wife obtained a decree absolute for divorce in September, 1909. On 6th November, 1909, she filed a petition to the Court for variation of her marriage settlement, but in November, 1909, before the petition was heard, she married again. EVANS, P., held that he had jurisdiction to over-ride the restraint which attached on the wife's second marriage, but the judgment is ostensibly based upon the decision of the Court of Appeal in *Michell* v. *Michell*, 1891, P. 208. It is difficult to see the connexion between the decision in *Michell* v. *Michell* and the point which had to be decided in *Churchward* v. *Churchward*. In *Michell* v. *Michell* it was decided that the Court had no power under s. 3 of the Matrimonial Causes Act, 1884, to order a settlement of property which was subject to restraint. That section relates to actions for restitution of conjugal rights. The Court of Appeal in *Michell* v. *Michell* incidentally shewed that, although in that case there was no power to over-ride the restraint, the Court could, after dissolution of marriage, make an order affecting property which had been subject to restraint when "according to the ordinary doctrines of the Court of Chancery" the dissolution of the marriage made the property free from the restraint, p. 211. The effect of such a subsequent marriage as we are considering was not the point in *Michell* v. *Michell*, and although it was the sole point in *Churchward* v. *Churchward*, the judgment in the latter case displays a very meagre appreciation of it. It may be that a decision, that the subsequent marriage of the petitioner could not take away from the Court the jurisdiction which had become exercisable by the petition to vary the settlement, could have been supported by the doctrine of *lis pendens*.

See *Loraine* v. *Loraine*, 1912, P. 222, at pp. 229, 231, 232. It is clear, however, that no such doctrine would apply to the case of a petitioner for variation of a settlement who had already married before presenting the petition. In the recent cases of *Morgan* v. *Morgan and Kirby*, 1923, P. 1, before DUKE, P., a decree absolute was pronounced on the husband's petition for divorce on 2nd May, 1921. On 10th May, 1921, the divorced wife married the co-respondent. On 19th December, 1921, the husband presented a petition to vary the settlement. The divorced wife had interests which she was restrained from anticipating, and the discoverture which arose on the dissolution of the marriage on 2nd May only lasted until 10th May, 1921; so that at the time that the petition to vary was presented in the following December she was under coverture and restrained from anticipation. The learned President came to the conclusion that LINDLEY, L.J., in remarking in *Michell* v. *Michell* upon the power given to the Court under the Matrimonial Causes Act, 1859, "that enlarged power is only given when the wife ceases to be a wife, namely, after a final decree of nullity or dissolution of marriage, and where according to the ordinary doctrines of the Court of Chancery she would be free from the restraint" had not in his mind the case of a married woman who had been divorced and had re-married, and later the President said: "The conspicuous feature of the statute here relied upon is that—and it has been recognised beyond doubt for nearly three-quarters of a century—it warrants the variation of settlements where there is restraint upon anticipation, although the statute does not contain express terms. The statute was in my judgment aimed at that very matter." The case of *Churchward* v. *Churchward* does not appear to have been mentioned and the only case in which the learned President could find that the matter had been discussed was *Merton* v. *Merton*, 83 L.T. 223. In that case BARNES, J., gave back to a wife, who had married again before presenting the petition to vary her marriage settlement, property which she was restrained from anticipating. Under the settlement she had a general power of appointment after the death of her husband, and it may be that the Court had the power so to vary the settlement as to make this power of appointment exercisable upon the dissolution of the marriage. The judgment is, however, very short and amounts to little more than the making of the order. In *Morgan* v. *Morgan and Kirby* the question is dealt with at greater length and the doctrine that a petition once filed becomes a *lis pendens* before a decree absolute is pronounced would have been doubted but for what the Court of Appeal had said in *Michell* v. *Michell*.

So long as the decision in *Morgan* v. *Morgan and Kirby* stands it seems to be the case that until 1859 no Court could over-ride the restraint on anticipation, but that the Divorce Court then acquired an implied power for this purpose exercisable in the interests of the children of a marriage or their parents, although to no Court was given an express power to over-ride the restraint until in 1881 there was conferred on the Chancery Division a power exercisable only for the benefit of the married woman herself.

C. E. S.

The Law of Property Act, 1922.

Making Title to Land.

(Continued.)

WE noticed last week that in s. 7 of the Act pressure is put upon vendors to make, and on purchasers to accept, wherever possible, title under a trust for sale or a settlement. The reason is that title made in this way has, under the existing law and practice as extended by the Act, a special effect in overriding equitable interests, and as far as practicable the "estate owner" is placed in the position, as regards transfer to a purchaser, as an absolute owner. Vendors, as we have pointed out, *ante*, p. 435, fall into well-defined classes: absolute owners, tenants for life who sell under the Settled Land Acts, trustees for sale, personal representatives, and mortgagees. Each of these have well-defined powers under the existing system, and the new system extends their powers. It may be questioned, however, whether there is any need to compel vendors to sell only under one of these titles. As we pointed out last week, the Act places obstacles in the way of transfers which at present can be effected without difficulty. Under s. 7 (1), if the estate owner can make a title to the legal estate under the Settled Land Acts and so bind an equitable interest, the purchaser can require the title to be made in this way, notwithstanding any stipulation to the contrary; subject only to the qualification that no application to the court is necessary. Now, an estate owner, whose estate is subject to an equitable interest, can make a title overriding the equitable interest by creating a settlement under s. 53, and if he appoints a trust corporation as trustee, no application to the court is necessary. Thus, practically, all equitable interests can be overridden by the joint operation of a settlement under s. 53 and the Settled Land Acts, and this is the title which a beneficial vendor will have to make. It is assumed that s. 7 (1) requires him, where there is no existing settlement, to create one under s. 53, but this assumption appears to be correct. Any owner in fee simple subject to equities can by adopting the statutory machinery, make a title under the Settled Land Acts, and s. 7 (1) says he must do so.

Similar provisions are made in s. 7 (1) (*a*) (*b*), and by (*c*) a purchaser of land subject to a trust for sale can require the title to be made under that trust. It is not worth while, having regard to the pending reconstruction of the Act, to pursue the matter further, but there may well be occasions when it is more convenient to make a title with the concurrence of persons having equitable interests, and in future this will only be possible with the consent of the purchaser. Such occasions will probably be rare, for the purchaser has the great advantage that, upon a conveyance under the Settled Land Acts, death duties which have not already attached are transferred from the land to the proceeds of sale; though the purchaser may, perhaps, get the same advantage under the special provisions of s. 15, with regard to death duties. But if s. 7 is to find a place in the re-arrangement of the Act, it should be re-drafted so as to avoid the overlapping, and apparently, too, the contradiction, which exists between s-ss. (1) and (3). It should be possible to make it clear in a single enactment that a purchaser shall require a title to be made, where practicable, under the Settled Land Acts or a trust for sale. It may now, we hope, be taken for granted that s. 3 will be re-drafted so as to make it intelligible and easy to work, and the same course should be taken with s. 7.

We have noticed the overriding effect of a conveyance by a personal representative and a mortgagee, and this effect is greatly extended by s. 3 (1) taken with the exclusion of such a conveyance from s. 3 (2). But we doubt whether the operation of these provisions has been fully appreciated, and possibly it will not be reproduced in the re-drafting of the section. And, indeed, the framers of the Act have not relied on the ordinary powers of personal representatives, but have also by s. 163 given them the powers both of trustees for sale and, by reference, of tenants for life under the Settled Land Acts. The marginal note to that section is, indeed, "Powers of Management"; but the section goes beyond mere management, for which it would be useful, and gives over again the power of sale which the personal representatives already have, including, as regards administrators, an express trust for sale under s. 147. In this respect the Act is redundant, and for that reason is likely to prove embarrassing. Legislation by reference has been a frequent subject of criticism in recent years. Section 163 (iii) is objectionable on this ground, and the section should be re-drafted so as to show clearly what powers personal representatives are to have, without introducing the fiction that they are tenants for life. The machinery of the Settled Land Acts is useful in its proper place. To drag it into other branches of the law with which it has no obvious connection is a mistake. Hitherto personal representatives have had well-defined powers of disposition of personal estate, and these were extended by s. 2 (2) of the Land Transfer Act, 1897, to real estate. This enactment is reproduced in s. 156 (1) of the present Act; and the conferring of duplicate powers by s. 163 is unnecessary, though a certain addition to a personal representative's powers of management proper—as regards leases, for instance—might be desirable.

The April Session of the Central Criminal Court was opened at the Sessions House, Old Bailey, on Tuesday, by the Lord Mayor, who was accompanied on the Bench by Alderman Sir T. Vansittart Bowater, Alderman Sir John Baddeley, the Recorder (Sir Ernest Wild, K.C.), Mr. Sheriff J. E. K. Studd, Mr. Sheriff S. H. M. Killick, and Mr. Under-Sheriff W. H. Champness. Mr. Justice Acton took his seat on Wednesday morning to begin the trial of cases in the Judge's list. The Recorder, in charging the Grand Jury, said the calendar, which had in it the names of 108 accused persons was about the normal length, having regard to the interval which had elapsed since the last session.

The "Utter Barrister" or Barrister-at-Law.

In a previous article, *ante*, p. 348, we traced the history of the Serjeant-at-Law and showed how this order had its origin in the body of "King's Friends," *i.e.*, men of gentle or noble birth who attended the King's Court wherever it went and had access to His Majesty. These men gradually divided into two well-marked bodies, the military sergeants, who were the predecessors of the modern "commissioned officer," and the civil serjeants who assisted the King in disposing of the suits which came before him. In due course the King set up his *Curia Regis*, or High Court of Justice, to hear and determine disputes which could not be satisfactorily dealt with in the local courts—Manor courts, Hundred courts, Borough, Sheriff, feudal "liberties," and other courts of record which then dotted the country. In this new *Curia Regis* the leading "Serjeants-at-Law" assisted the King, both as judges and as advocates. Gradually they became the recognized body of counsellors-at-law in the King's own courts. Meanwhile the local "attorneys," predecessors of the modern solicitor, were the advocates in the ordinary local courts of record, just as they still are in Scotland.

But gradually two changes took place. One was the withdrawal of jurisdiction from the local courts by all sorts of devices, *Quo Warranto* writs sued out in the King's Bench being the chief plan. These writs called upon some local court to produce its charter or prove its customary and prescriptive right to exercise jurisdiction; any defect of title was treated as conclusive against it, and led to its abolition. In this way all the local courts, except a few privileged "liberties" which still exist, *e.g.*, the Bristol Court of *Tolzie* and the Salford Hundred Court, gradually passed out of existence. The jurisdiction of the King's own court grew as that of its rivals vanished. But the King's Court was not disposed to let the local "attorneys" conduct their clients' cases in person, as they had done in the local courts. They had to brief a "serjeant." But, as a sort of compromise, the serjeant was usually required to have a junior or assistant, who was an "attorney." Gradually this special class of attorneys, who aided the serjeant in the King's Court, began to form a privileged order, and to insist that only their own "apprentices-ad-legem" should be admitted to practice of this special sort. In this way grew up the order of barristers-at-law.

What happened was this. In the beginning of the Norman period, hostels became established around Westminster to train young men in all the arts, learning and graces of the King's Court. These were the "Inns of Court." The Lord Chancellor had a similar vice-court of his own, attended by his own bevy of young men aspiring to office, and these occupied hostels known as the Inns of Chancery. Gradually the apprentices, whose masters were merely attorneys authorized to practice as law-agents, were excluded from the Inns of Court, and confined to the Inns of Chancery. The apprentices of the privileged attorneys, who appeared as junior to the serjeants, on the other hand, were allowed to remain in the Inns of Court; soon they ousted from them the merely military or clerical students. The Four Inns became a recognized close corporation of attorneys who practised at the Bar of the King's Court, and this position they have ever since retained.

This privileged class of advocates were known as the "Masters" of the Bench, and were organized on the model of the Guilds in the City. They consisted of Masters or Benchers, journeymen, and apprentices. The apprentices were the students or students-ad-legem. The journeymen were those students or apprentices who had served their time meritoriously and had been deemed worthy to be admitted members of the fraternity of advocates.

They were admitted to the "Outer" or "Utter" Bar, so called in distinction to the "Inner Bar," at which the Masters of the Bench practised. At this period these Masters were very largely serjeants-at-law, but in, course of time, the serjeants abandoned the Four Inns, and formed their own famous Inn, of which mention has been made in our previous article. Gradually the Bar came to consist of serjeants, benchers and "utter barristers," or journeymen of the Bar. In time the two latter became fused, although a body of unprivileged journeymen still existed, namely the "special" pleaders, who practised "under the Bar," *i.e.*, drew pleadings, but did not appear as advocates. This body, of course, only disappeared with the reforms instituted by the Judicature Acts, and until very recently a few of the old special pleaders were still alive, although they had all become full members of the Bar.

The history of the "Utter Barrister" in his later stages is familiar to all students of legal history. Gradually the Bar obtained the monopoly of work in every one of the King's Courts and the Chancery Courts, except the Common Pleas Division, where the serjeants retained their old monopoly until the abolition of this Order. At assizes, quarter sessions, and other courts, serjeants and barristers appeared with equal rights; the serjeants had precedence, but no other privileges; and the leading barristers gradually succeeded in obtaining a "patent of precedence" which placed them practically on a professional equality with the serjeants. The chief changes which occurred in the profession after its original formation in the Lancastrian period, needless to say, was the creation of "King's Counsel." The Tudor Monarchs brought this new class of counsel into existence, granting them a special concession under the Great Seal, which conferred precedence over the rest of the Bar other than the law officers and the serjeants. They were not allowed to accept briefs against the Crown without the Royal Assent, but after the Great Revolution of 1689, this was accorded as a matter of course, and nowadays no King's Counsel ever ask for it. Originally few in number, the ranks of the King's Counsel tended to increase and increase, until about the beginning of the Nineteenth Century it became *de rigueur* for a successful practitioner to obtain silk if he wished to be retained as a leader. There are now at least 400 King's Counsel.

With the disappearance of the Order of the Court, and the serjeants-at-law, the old original Bar really passed out of English history. The present Bar is not its lineal descendant at all. It is really the offspring of a specially privileged class of attorneys, who acted in the King's Courts in the capacity of intermediaries between the attorney and the serjeant. In fact, in its origin, it resembles the Scots Corporation of Writers of the Signet, who still act as nominal intermediaries between the writer (*Anglicé*, solicitor) and the advocate (*Anglicé*, barrister.) The English barristers began by merely settling the pleadings for the serjeant, who conducts the case in court; this is the origin of the practice which restricts the settlement of pleadings to junior counsel. But gradually they acquired the right of following their leaders, the serjeants, in argument, and of examining witnesses. Perhaps the right was first acquired when the serjeant happened to be absent when his case was called upon; if so, it forms an interesting precedent for those solicitors who now desire to be given the right of an audience in such circumstances. But, of course this is mere conjecture. What is quite certain is that gradually the barristers acquired the full right of audience and even of acting alone. Then they obtained the monopoly of all the King's Courts except that of the Common Pleas.

The history of the Bar is long and interesting. Much is still obscure. Much has only recently been elucidated by patient research on the part of black-letter lawyers, mostly American. What has emerged, however, is the close relation which once existed between the nascent barrister and the nascent attorney. The moral, no doubt, will not be lost sight of by advocates of fusion.

How Legal History is Written.

Mr. T. P. O'Connor, M.P., is the "Father" of the House of Commons. He is an author and journalist of repute. Amongst his other literary activities, he contributes a weekly *causerie* to the *Sunday Times*. On Sunday (8th April), he spread himself over Palmer the Rugeley poisoner, and Chief Justice Cockburn. The following extract is typical of the writer's methods:—

"'The Riding Lost it.'

"Another of the stories current at the time which I have often heard was that Palmer attributed his conviction to the clumsy pleading of his counsel. Borrowing a phrase from the pursuit to which he was addicted, Palmer declared that 'it was the riding that lost it.' The leading prosecuting counsel, if I remember rightly, was Sir Alexander Cockburn, afterwards a famous Law Officer and Chief Justice. The chief counsel for the defence was Sir Fitzroy Kelly—who afterwards also became famous as Chief Baron. Kelly, of course, had really no defence, and therefore had to resort to all kinds of theories, the chief of which was that the man whom Palmer had murdered by arsenic had really died from the pips of apples. He was known, I believe, as 'Apple-Pip Kelly' for some years afterwards."

We doubt if another paragraph could be found in the realm of literature containing such a collocation of abysmal blunders. So many persons believe whatever they see in print that it may be worth while to nail a few of Mr. O'Connor's misstatements to the counter.

Palmer was tried at the Central Criminal Court in May, 1856, before Lord Campbell, C.J., Alderson, B., and Cresswell, J. It was then, and even later, usual for important trials at the Old Bailey (not merely capital cases) to be heard before two, or three, judges of the superior courts. The peculiar feature of Palmer's case was that it was tried in London instead of at Stafford under the provisions of a statute passed *ad hoc*, 19 & 20 Vict. c. 16, generally known as "the Palmer Act," but now given the short title of the Central Criminal Court Act, 1856. Mr. O'Connor's

one lapse into accuracy is his statement that the leading prosecuting counsel was Sir Alexander Cockburn. But Cockburn was not "afterwards a famous Law Officer." He was Attorney-General at the time, and prosecuted as such. The chief counsel for the defence was not Sir Fitzroy Kelly, but Mr. Serjeant (afterwards Mr. Justice) Shee. It has never been suggested that Palmer attributed his conviction to his counsel. Nor is he alleged to have declared, as Mr. O'Connor puts it, that it was the riding that *lost* it. What Palmer is said to have scribbled to his attorney after the verdict was: "The riding *did* it"—an involuntary tribute to Cockburn's acumen. Finally, the murder of Cook, of which Palmer was convicted, was not by arsenic, but by strychnine.

So much for the *Palmer Case*. Mr. O'Connor's references to Sir Fitzroy Kelly are evidently the result of a confusion with the case of Tawell, the poisoner, tried at the Bucks Assizes, at Aylesbury, in March, 1845—eleven years before *Palmer's Case*. The judge in *Tawell's Case* was Baron Parke, afterwards Lord Wensleydale. Mr. Serjeant (afterwards Mr. Justice) Byles led for the prosecution, and Mr. Kelly, Q.C., then a leader on the Norfolk Circuit, for the defence. The poison was prussic acid, not arsenic. Mr. Kelly, quite properly in the course of the defence, put it to the expert witnesses and to the jury that prussic acid might be conveyed into the system by apple-pips. The passing soubriquet "Apple-Pip Kelly" never detracted from the fair fame of the last of the Chief Barons.

It would be an impertinence to reflect upon the matter which the Editor of the *Sunday Times* may consider suitable for his readers. Our function is merely that of entering a *caveat* against a travesty of legal history.

Reviews.

Statute and Case Law.

CHITTY'S STATUTES OF PRACTICAL UTILITY. Vol. XXI. Part 2. Containing Statutes of Practical Utility passed in 1922, with Incorporated Enactments and Selected Statutory Rules. By W. H. AGGS, M.A., LL.M., Barrister-at-Law. Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 16s. net.

BUTTERWORTH'S TWENTIETH CENTURY STATUTES [Annotated]. Vol. XVIII. Containing the Public General Acts passed in the year 1922 relating to England and Wales. By K. E. SHELLY, Barrister-at-Law. Butterworth and Co. 21s. net.

BUTTERWORTH'S YEARLY DIGEST OF REPORTED CASES FOR THE YEAR 1922, being the Yearly Supplement to Butterworth's Twenty-four Years, Digest, 1898-1922. Edited by W. S. GODDARD, M.A., Barrister-at-Law. Butterworth & Co. 21s. net.

MEWS' DIGEST OF ENGLISH CASE LAW TO 1920. 18 vols. Annual Supplement for 1922. By AUBREY J. SPENCER, Barrister-at-Law. Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

These books represent the current output of law with which the practitioner may have to deal. With part of it, by notoriety or use, he may be familiar. To most of it he only requires a finger-post. There is nothing like being ready with the law on any particular point, but this does not necessarily mean that the lawyer must have it in his head. He must know where to find it. Some few principles he no doubt retains from student days; some he has assimilated in the course of his practice; how many leading or other cases he knows depends on tricks of the memory. But with all practitioners it comes to this, that he must have the essential books at hand and must have ready means for getting the particular information he wants.

The leading feature of last year's statutes was the Law of Property Act, but both the above collections of statute law wisely refrain from printing it. If we may speak of anything so vast as a "transient and embarrassed phantom," the term aptly describes it. Whether future collections of the statutes will include the Acts designed to give it permanent form can be left to the future. Of statutes found here which are important to the practitioner we may mention the Allotments Act, the Criminal Law Amendment Act, the Finance Act, the Gaming Act, and the Juries Act, and both volumes go outside purely English law and print the Treaties of Washington Act and Irish Free State Agreement Act, while Butterworth's Statutes print also the Irish Free State Constitution Act and Irish Free State (Consequential Provisions) Act, which were passed in the second session last year. The appendix of Statutory Regulations is a valuable feature of "Chitty."

The Yearly Digests are as important a feature as the statutes for enabling the lawyer to be up to date, and as between "Mews'" and "Butterworth's" it is not for us to select. Whichever the practitioner uses, he should be able to make sure of not missing an authority.

Books of the Week.

Jurisprudence.—The Origins of Order and Law. By HERMAN COHEN, Fellow of University College, London. Effingham Wilson. 2s. 6d. net.

Workmen's Compensation.—Butterworth's Workmen's Compensation Cases. Vol. XV (New Series). Being a continuation of "Minton-Senhouse's Workmen's Compensation Cases," containing Reports of every case heard in the House of Lords and Court of Appeal, England, and selected cases heard in the Irish Court of Appeal and Scottish Court of Session, decided under the Workmen's Compensation Acts, during the period 1st December, 1921, to 31st January, 1923. Edited by His Honour JUDGE RUEGG, K.C., and EDGAR DALE and W. R. HOWARD, Barristers-at-Law. Butterworth and Co. 17s. 6d. net.

The Law Quarterly Review.—April, 1923. Edited by A. E. RANDALL Barrister-at-Law. Stevens & Sons, Ltd. 6s. net.

CASES OF THE WEEK.

Court of Appeal.

DODD *v.* AMALGAMATED MARINE WORKERS UNION.

No. 1. 10th April.

TRADE UNION—RIGHT OF MEMBER TO INSPECT BOOKS—INSPECTION BY ACCOUNTANT ON BEHALF OF MEMBER—PRACTICE—INTERLOCUTORY MOTION—ORDER GRANTING ALL THE RELIEF CLAIMED IN THE ACTION—TRADE UNION ACT, 1871, 34 & 35 VICT., C. 31, S. 14.

It is not the usual practice of the Court to grant upon interlocutory motion, where there has been no consent to treat the motion as the trial of the action, all the relief claimed in the action itself.

Although the members of a trade union may, under its rules, or under the Trade Union Act, 1871, *have a right to inspect the books and accounts, the decisions in* Norey *v.* Keep, 1909, 1 Ch. 561 *and* Bevan *v.* Webb, 1901, 1 Ch. 724, *do not establish the principle that every individual member may claim the right to have inspection when he chooses by an accountant on his behalf.*

Appeal from a decision of Astbury, J.

The plaintiff in this action was a member of the defendant union. The union purported to expel him, but he obtained an order from Astbury, J., that his expulsion was not valid. The rules of the union, following the provisions of s. 14 of the Trade Union Act, 1871, contained a provision that the books and accounts should be open to the inspection of any member at all reasonable times, and on 5th March, 1923, the plaintiff wrote to the secretary that he would attend on 7th March with his accountant to inspect the books and accounts. The secretary, however, refused to allow the accountant to inspect the books, although the latter tendered an undertaking that he would not make use of any information so acquired except for communicating to the plaintiff the result of his inspection. The plaintiff then commenced proceedings against the union, and moved on an interlocutory motion for an order enabling him to make an inspection. Astbury, J., held that by the decision of Parker, J., in *Norey* v. *Keep, supra*, any single member was entitled to an inspection, and he made the order as prayed. The counsel for the union intimated during the proceedings that the action was not *bonâ fide*, and stated that before any such order was made he desired to have an opportunity of cross-examining the plaintiff. The union appealed. The Court allowed the appeal.

Lord STERNDALE, M.R., said that the plaintiff had claimed (1) inspection of the accounts; (2) production of the books and accounts to him and his accountant; (3) damages; (4) costs. Unless (1) and (2) were granted there could be no damages, and therefore the order made on the interlocutory motion was in effect a granting of the sole substantial relief claimed in the action. It might be right to grant such relief in certain cases, although there had been no agreement between the parties to treat the motion as being the trial of the action, but it certainly was not the usual practice of the Court, and the judge had granted it in this case without requiring from the plaintiff any undertaking as to damages. With regard to the two cases cited, *Norey* v. *Keep, supra*, and *Bevan* v. *Webb, supra*, they were said to be authority for the proposition that any member might ask the Court to restrain the union from preventing his having an inspection of the books by his accountant. All that he (the Master of the Rolls) wished to say about those cases was that he did not think that they established any proposition so far-reaching as that. He did not doubt the correctness of those decisions, but in the present case they seemed to have been pushed too far. The appeal must, therefore, be allowed, and the order below discharged.

WARRINGTON and YOUNGER, L.JJ., delivered judgments to the same effect.—COUNSEL: *Grant*, K.C., and *David White*, for the appellants; *Luxmoore*, K.C., and *Lavington*, for the respondents. SOLICITORS: *White and Co; Frank Daphne.*

[Reported by G. T. WHITFIELD-HAYES, Barrister-at-Law.]

Mr. John Andrew Percival, of Peterborough, solicitor, formerly clerk to the Peterborough and Norman Cross Justices, who died on 27th February, aged seventy-five, left estate of the value of £41,428, with net personalty £34,155. He gives:—£200 to the Peterborough Cathedral Restoration Fund (less the sum he had already given); £250 to the Vicar and Churchwardens of St. John the Baptist, Peterborough, towards the removal of the stucco from the outside of the church and making good the walls; and £125 to the executors for his clerks and caretaker.

In re **Sir JOHN JACKSON (deceased): JACKSON** *v.* **HAMILTON.**
No. 1. 16th April.

WILL—CONSTRUCTION—BEQUESTS TO DOMESTIC SERVANTS—WHETHER INCLUDING OUTDOOR SERVANTS NOT DIETED BY TESTATOR—INTENTION OF TESTATOR.

A legacy of so many years' wages to domestic servants of a certain length of service may include in its benefit such outdoor servants as a gardener, a chauffeur and a coachman, although these were not actually living in the testator's house and were receiving wages on the basis of their providing their own food.

Ogle *v.* Morgan, 1852, 1 De G. M. and G., *distinguished and not followed.*

Decision of Eve, J., *reversed.*

Sir John Jackson, the well-known contractor, died in 1919, leaving a very large estate. By his will he gave legacies to each domestic servant in his employment at his death on a graduated scale, according to their length of service. A summons was taken out by the executors to determine whether the testator's coachman, who had been twenty years, his chauffeur, who had been sixteen years, and his gardener, who had been six years, in his service could participate under the gift. The evidence showed that the testator had had a house in London and a house in the country. The coachman and chauffeur had followed him from one to the other, and had been given rooms over the stable or garage, with firing, light, &c. The gardener had had a cottage provided for him at the country residence. They had been allowed vegetables from the garden, but otherwise had provided their own food. Eve, J., held that the case of *Ogle* v. *Morgan, supra*, had decided that an outdoor servant was not a domestic servant for this purpose, and that the three servants in question were not entitled to the legacy. The servants appealed. They contended that *Vaughan* v. *Booth*, 16 Jur. 808; *In re Drax*, 57 L.J. 475, and *Cochrane* v. *Ogilby*, 1903, 1 Ir. Rep. 525, had simply followed *Ogle* v. *Morgan*. That case, however, was not binding in the construction of other wills; the meaning of the words "domestic servant" had changed during the seventy years which had elapsed since its decision, and in cases under the Unemployment Insurance Act, 1920, such as *In re Junior Carlton Club*, 66 SOL. J. 6; 1922, 1 K.B. 166, a much wider meaning had been given to the words, and one which would amply cover the case of the appellants. For the residuary legatees it was said that *Ogle* v. *Morgan, supra*, had established a principle adopted in all the legal text-books; that in "Theobald on the Law of Wills," 7th edition, at p. 273, and "Jarman on Wills," 2nd volume, p. 1120, it was distinctly stated that outdoor servants were not domestic servants in this connection.

The Court allowed the appeal.

Lord STERNDALE, M.R., said that the testator had employed a great deal of labour, and in his will appeared to have recognised the difference between his business and domestic employees. If there had been no authority, he (Lord Sterndale), at any rate as regards the chauffeur and the coachman, would have had no doubt that they were domestic servants in the ordinary use of the words, living in what was really a part of the testator's house and fulfilling the ordinary functions of domestic servants. There might be more doubt in the case of the gardener, but, after all, a man who cultivated the vegetables for the household and looked after the amenities of the garden for the testator's enjoyment might surely be said to be a domestic servant, employed to look after the testator's comfort, though he was not actually in his house. But it was said that there was binding authority which prevented the Court from taking that view, and that was really all based on Lord Truro's decision in *Ogle* v. *Morgan, supra*. That was said to lay down the principle that an outdoor servant could not be a domestic servant. In his (Lord Sterndale's) view, it did not lay down that; but, if it did, it was only a *dictum*, and could not establish that in no will, in any possible circumstances, could a gift to domestic servants include outdoor servants. If it really went so far as that, it was only a *dictum*, by which the Court was not bound. But in his (Lord Sterndale's) view, it did not go so far as that, and it seemed that, in certain circumstances, the words "domestic servants" might well include such persons as the appellants. It must be remembered, too, that in the seventy years which had passed since that decision there had been much discussion on the meaning of the words "domestic servants," for instance, under the Unemployment Insurance Act. It was not to be suggested that the wide definition of domestic servants in the cases under that Act was to be adopted by the Court for every case of the construction of a will; but the discussion showed that seventy years had perhaps changed the popular meaning of the words "domestic servant," and they did not necessarily bear the same *primâ facie* meaning now as then. The Court must look at the intention of the testator in all the circumstances of the case, not forgetting that he was a large employer of other kinds of labour, and the Court was entitled to conclude that these persons were domestic servants for the purposes of this will, and that it was the intention of the testator that they should benefit. The appeal would be allowed, and the question asked by the summons, whether the appellants were domestic servants, would be answered in the affirmative.

WARRINGTON and YOUNGER, L.JJ., delivered judgment to the same effect.—COUNSEL: *Wilfred Hunt*, for the appellants; *D. D. Robertson*, for the residuary legatees; *Bischoff*, for the executors. SOLICITORS: *Batten and Co.*, for all parties.

[Reported by G. T. WHITFIELD-HAYES, Barrister-at-Law.]

CASES OF LAST SITTINGS.

House of Lords.

"THE COUNTESS." 16th March.

SHIPPING—DOCKS—DAMAGE BY STEAMSHIP TO DOCK GATES—LIEN BY DOCK BOARD—DETENTION AND REPAIR OF VESSEL—LIMITATION OF LIABILITY—LIMITATION OF LIEN—DETINUE ACTION—PRIORITIES—MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT, 1900, 63 & 64 Vict., c. 32, ss. 1, 3.

The plaintiffs' steamship, owing to negligence, burst through the gates of a dock belonging to the Mersey Dock and Harbour Board causing damage to the gates and to a number of other craft. The Board then took possession of the steamship and repaired it at a cost of £1,048 and claimed to detain it until they were paid £4,468, the statutory amount of the plaintiffs' liability, and also the £1,048. The steamship was released on payment into court of £5,500. The plaintiffs brought a limitation action and also an action of detinue against the Board.

Held, that the Board was entitled to the £5,500 to the exclusion of other claims by owners of other craft damaged by the collision.

This was an appeal from the Court of Appeal, 1922, P. 41, affirming in substance a decision of the President, 1921, P. 279. In June, 1920, the steamship, *The Countess*, owing to negligence, burst through the gates of a dock belonging to the Mersey Dock and Harbour Board injuring the dock and causing considerable damage to various other craft. The Board patched up and removed *The Countess* to another dock for repairs, where she remained in constructive detention by them, and the Board's expenses for these services were £1,048. The owners of *The Countess* brought an action against the Board and owners of damaged craft to limit their liability, and the whole amount of the owners of *The Countess's* statutory liability was agreed at £4,468. The same owners also commenced an action of detinue against the Board, and the Board counter-claimed alleging their right to detain the ship until the whole of the £4,468 was paid to them, and also claiming £1,048 for removal of and repairs to the vessel which was released by an order on payment into court of £5,500. The two actions came on to be heard together before the President, who gave judgment for the plaintiffs in the limitation action and for the defendants in the detinue action on their counter-claim for £1,048, but he held that the defendants had no priority; and his judgment was in substance affirmed by the Court of Appeal.

Lord BIRKENHEAD, after referring to the Mersey Docks Acts Consolidation Act, 1858, s. 94, and to the Merchant Shipping Acts of 1894 and 1900, said s. 5 of the 1900 Act should be construed as one with the Act of 1894. It was necessary to consider the extent to which the Act of 1900 had amended the Board's Consolidation Act. There could be no doubt that the Board were entitled under their Consolidation Act to detain the ship until the damage was paid or a deposit was made. That detention could be put an end to by appropriate procedure on the part of the shipowners. The appellants would perhaps also take proceedings to recover the sum due, but the section imposed no such liability on them. The value of the ship was immaterial. The damage might be smaller or larger than the value of the vessel. The exercise of this statutory power to detain conferred a possessory lien and was not part of any procedure to ascertain the sum due. That lien in his opinion, could be relied upon as justifying detention until actual payment. The Act itself prescribed the method whereby the shipowner might obtain release of the vessel, namely by paying the sum demanded or by paying as a deposit a sum to cover the disputed amount. That right remained unaffected until 1900, for the earlier statutes made no provision for the limitation of liability in the case of damage such as that suffered by the appellants. In any case arising since 1900 the lien could not be exercised to enable the appellants to claim a greater sum than the maximum allowed by s. 1 of the Act of 1900 where the shipowner took advantage of that section; but the really important point was whether the Act had affected the exercise of the lien, and if so, to what extent. The 1900 Act contained no words which expressly affected the right to detain, nor could it be inferred that the right had been affected. The Act of 1900 had cut down the amount for which the appellants could exercise this lien, but had not otherwise affected it. The vessel had indeed been released by payment into court, but the sum in court represented the vessel for that purpose. What their lordships were asked to hold was that the lien was only effective up to the share in the fund to which the appellants would be entitled if they had no special right under their Act; in other words that the lien was now merely an adjunct to the right to participate in any fund distributable in a limitation action. That conclusion was one which seemed to him impossible. For these reasons the appellants were entitled to succeed, and the sum in court was subject to the Board's lien under s. 94 of their Act, and should be paid to the appellants. The appeal should be allowed.

Lord FINLAY and Lord ATKINSON gave judgment to the same effect.

Lord SUMNER and Lord PHILLIMORE dissented.

Lord SUMNER said that the appellants had throughout based their argument on a fundamental fallacy, namely, that it was really the ship that was liable and not the shipowners, that the Acts enabled the shipowners to substitute £8 a ton for their ship, that procedure was of subordinate importance, and that if the shipowners deposited £8 a ton somewhere they could go away with the ship. Everything else went on as before.

The Board so far as might be necessary had a possessory lien for its claim on the money deposited and that lien must be discharged since it could not be cut down. In spite of the action for limitation of liability the bargeowners were left in the lurch. No case was cited in which such a claim to priority in a limitation action had been sustained. All the cases, though none was directly in point, were adverse to such an interference with equality and suggested the principle that a rateable distribution placed on the same footing all claims which, as in this case, were the same in their quality. The appellants relied on their private Act. What then was s. 94 of their Act of 1858? The case for which it provided, that of damage to dock property by the negligent handling of a ship, was one for which the common law already provided an ample cause of action, but the procedure to be followed was that of an ordinary trial with a jury. To give a permissive remedy by summary proceedings before a justice was no doubt a boon to the dock company, and an alternative right to detain the ship no doubt gave a further advantage, but no word so far was to be found in the section to enlarge or qualify the cause of action and nothing was provided but the means of enforcing the pre-existing right whatever it might be. First of all detention was a bare right to detain. There was no pledge, no charge, no right *ad rem*, no power to sell, no power to any court to order a sale. It had been said that the section gave a possessory lien, but it might well be questioned whether the section gave such possession as would enable the Board to bring trover. What could the Board do if they detained the ship? Nothing at all unless the owners for their part first took action. Except as a means of bringing pressure to bear on the shipowners detention of the ship resulted in nothing. When the money was deposited it did not represent the ship, against which when the section was passed the Board had no remedy *in rem*. It represented the amount claimed to be contingently due from the shipowners, a representation in quite another sense. The whole section was pure procedure and added nothing to the cause of action. The liability remained as it always was, viz., a personal liability in tort for unliquidated damages and nothing was provided which assimilated it to a specialty debt. If the Board continued to detain the vessel after the amount claimed had been deposited or paid, the owners' remedy would be an action in detinue and would not be anything in the nature of a redemption action. If the Board had a legal right to be satisfied in priority to the bargeowners the court might not satisfy the bargeowners in derogation of that right, and if the Board had not that legal right, "rateably" could only mean *pari passu*. The court may distribute among all and the Board had to show some right to say that the court may not do anything except pay the whole fund to the Board without any distribution. Section 94 was the sole alleged foundation for it. It was not enough to say that the right to detain remained, for the question was to detain for what? and the answer was to detain as an additional remedy towards enforcing some legal right existing independently of s. 94, and that right was in the events which had happened only a right to a rateable share. If so, the appeal in the limitation action failed, and the appeal in the action of detinue also failed.—COUNSEL: *Talbot*, K.C., *Greaves Lord*, K.C., and *Stewart Brown*; *Raeburn*, K.C., and *Balloch*; *R. A. Wright*, K.C., *Miller*, K.C., and *Lewis Noad*. SOLICITORS: *Rawle, Johnstone & Co.*, for *W. C. Thorne*, Liverpool; *Thomas Cooper & Co.*, for *Hill, Dickinson & Co.*, Liverpool; *Charles Lightbound & Co.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Court of Appeal.

EDWARDS AND ANOTHER *v.* PORTER AND WIFE. No. 2.

27th March.

HUSBAND AND WIFE—TORT OF WIFE—FRAUDULENT REPRESENTATION OF AUTHORITY—IMPLIED WARRANTY—HUSBAND'S LIABILITY.

The female defendant asked the plaintiffs to lend her husband money to pay rates and certain charges for repairs to some property belonging to him. On these representations the plaintiffs handed her the money. The representations were all false and they were made fraudulently. The husband knew nothing of the matter. He had no need to borrow money and never authorized his wife to obtain the loan. Nor did he receive any of the money, but the wife received it and spent it.

Held, that the fraudulent representation of the wife was not a tort for which the husband could be sued as being liable for his wife's torts.

Decision of Bailhache, J., *affirmed* (Younger, L.J., dissenting).

Appeal from the decision of Bailhache, J., 1923, 1 K.B. 268; 67 SOL. J. 248. The plaintiffs claimed £355 as money lent. They alleged that the female defendant came to them and asked them to lend her husband money to pay his rates and certain charges for repairs to some property belonging to him. All these representations were false and they were made fraudulently. The husband had no need to borrow. Nor did he receive any of the money which was spent by the wife. The plaintiffs now sued both the female defendant, who actually borrowed the money, and her husband. The defence was that the husband never authorized his wife to borrow the money, and knew nothing of her having done so, and that the loan was really handed to the female defendant in order that she might lend it as an unregistered moneylender. Bailhache, J., held that the fraudulent representation by the female defendant that she had authority to make a contract on behalf of her husband was not a tort in respect of which the husband could be sued as being liable for his wife's torts, and the fact that no contract was in fact induced by such representation was immaterial. The plaintiffs appealed.

BANKES, L.J.: This appeal raises the question of the husband's liability for a tort committed by the wife. The result must depend on what is in law the true inference from the facts. In the present case I assume that the learned judge found that the statements by the wife were not only false, but fraudulent, though this finding is not expressly mentioned in the report. From the nature of the statements it would appear that, if false, they must also have been fraudulent. The wife must be held to have impliedly warranted that she had her husband's authority to make the statements complained of which induced the plaintiffs to part with their money to the wife. Bailhache, J., seems to have felt no doubt about the existence of the implied warranty of authority, and he says in terms that the wife would be liable if sued in an action for deceit or in an action for breach of warranty of authority. I think that the learned judge drew the correct inference in law from the facts, and that upon the authorities as they stand the husband cannot be held liable for the tort of the wife which is complained of. The appeal fails and must be dismissed with costs.

SCRUTTON, L.J.: The plaintiffs purported to make a contract with the husband through the wife as agent. She had, in fact, no authority to make it and knew it. She received the money for the husband and spent it adversely to him. She could, in my view, since 1882, have been sued, but as to her separate property only, either for breach of warranty of authority under *Collen* v. *Wright*, 1857, 8 E. & B. 647, or for money had and received, in assumpsit, waiving the tort. In either case, she and her husband appear to have the protection of the old rule as it existed before 1882, that as she could not be sued in contract, she and her husband could not be sued in tort in respect of the false representation which induced the contract. It is very unsatisfactory that when the reason for the old rule of liability of the husband, and the reason for the exception in cases of contract have both gone, the old rule should continue, but the decision of this court in *Earle* v. *Kingscote*, 1900, 2 Ch. 585, binds us to hold that both do continue. I think, therefore, that Bailhache, J., came to a right conclusion, and the appeal should be dismissed with costs.

YOUNGER, L.J.: The cardinal fact in this case is that no loan was made by the plaintiffs to the defendant, Mrs. Porter, nor was one asked for by her. The money was lent, or was intended to be lent, by the plaintiffs to her husband, the respondent, on his wife's false and fraudulent statement that he wanted the money to pay rates and provide for the repairs of some small property at Poplar. By the same fraud the wife induced the plaintiffs to hand over the money to herself, and she, when she got it, applied it all to her own purposes. The plaintiffs were cheated out of their money by the deceit of the respondent's wife. That is all that happened. In these circumstances, we are called upon to inquire whether the respondent, the husband, is liable for that very serious fraud of his wife. If he is so liable to the appellants, it is by the survival of an old rule of law quite opposed, it may well be, to the practically unqualified proprietary rights and responsibilities of married women as these now exist—so alien, indeed, to these rights and responsibilities, that, had their introduction been other than statutory, it might well have been held that their advent brought the rule itself to an end on the principle, *cessante ratione legis, cessat lex ipsa*. But the relevantly effective change in the status of married women was made by statute, by the Married Women's Property Act, 1882, and it was held in this court more than twenty years ago that that statute is, in its terms, not operative to do away with the old rule, which accordingly, so far at least as we are concerned, still survives in all its original strength. As Cozens-Hardy, M.R., said in *Cuenod* v. *Leslie*, 53 SOL. J. 340; 1909, 1 K.B. 880, 885, we have to treat such a case as the present "in the same way as it would have been treated in the year 1880," a statement which involves, among other things, that we must assume in the application of the rule that a married woman can still no more bind herself by contract than she could before the Act of 1882, for it is upon that basis that the distinction between the wife's liability and her non-liability in these cases rests. The position of a husband when he was sued jointly with his wife for her torts, committed either before or during coverture, is very clearly stated by Moulton, L.J., in *Cuenod* v. *Leslie*, *supra*. The husband's liability is that of his wife, not his own. He is made a defendant "for conformity." The question whether he is liable for this tort or for that tort of his wife does not depend on any consideration due to him in his character of husband; it depends solely on the question whether his wife is herself liable for the tort. If she is, so is he. If she is not, he too is exempt from liability. The question therefore here, as in all these cases, resolves itself into this:—Could the wife in an action properly constituted have been made liable in damages before 1882 for this fraud which has been proved against her? I find that it assists to state the question in this form. I find that when it is so stated, the reasons for the proper dividing line between a tort for which a married woman could be made liable and one for which she could not, become more intelligible than when these reasons are adduced with reference to the liability of the husband as a separate matter. It has been said that a wife was then liable only for her "naked" torts. The meaning of that expression and the reason for her being exempt from liability for torts that could not be so described are well set forth in the judgment of Willes, J., in *Wright* v. *Leonard*, 1861, 11 C.B. 258, 266, 267. That judgment also gives the reason for excepting certain frauds from those for which a married woman must remain liable. These excepted frauds were so favoured because if they had not been so favoured, the married woman would, in the result, have lost the protection which the law gave her against contracts made by her during coverture. But the conditions of exemption were strict. The frauds to be excepted must have been, as is stated in *Liverpool Adelphi Loan Association* v. *Fairhurst and wife*, 1854, 9 Exch. 422, "directly connected with the contract with the wife and have been the

means of effecting it and parcel of the same transaction." The interpretation of these words may be gathered from the subsequent stream of authority. First, the contract induced by the fraud must be a contract with the wife. Secondly, that contract must be, if not the purpose and object of the transaction, at all events one without the conclusion of which the transaction would not normally have had that effect. The court must in every case be able to see that, through the introduction of the element of fraud, there is not in real substance imposed upon a married woman the burden of a contract which by law is not binding on her. In the present case, no negotiation of any contract with the respondent's wife was ever in progress at all. The contract which the plaintiffs supposed they had made with her was a contract with the husband. It was that contract into which they were induced to enter by the fraud of the wife. No other contract was ever at any moment in the mind of any of the parties to this transaction. And the fraud of the wife in relation to the contract was as naked as it could be. If the question were asked: "Would this married woman, if made liable for this fraud, thereby be deprived wrongly of the protection which the law throws round her in respect of contracts made during coverture?" there could so far, I conceive, be only one answer. I am of opinion that the appellants in this case are entitled to judgment as well against the husband as against his wife. I would be for allowing this appeal. Appeal dismissed.—COUNSEL: *Lucien Fior; Thorn Drury*, K.C., and *Doughty*. SOLICITORS: *Butcher & Simon Burns; Sewell, Edwards and Nevill*.

[Reported by T. W. MORGAN, Barrister-at-Law.]

McNEALL *v.* HAWES. No. 2. 16th and 27th March.

HUSBAND AND WIFE—WIFE'S TORT—FRAUD OF WIFE—WARRANTY—HUSBAND'S LIABILITY.

A wife lent her husband's life policy to a third party in order that he might use it as a collateral security for a loan to herself. She also signed her name to a document authorising the proposed lender to hold the policy as a collateral security for the loan.

Held (*Younger, L.J., dissenting*), *that the wife's fraud was directly connected with a contract and was the means of effecting it, and parcel of the same transaction, and therefore the husband could not be sued for it.*

Decision of Lush, J., 1923, 1 K.B. 273; 67 SOL. J. 316, *reversed*.

This was an appeal from the judgment of Lush, J., *supra*.

BANKES, L.J., in a written judgment said: This is an appeal from a judgment of Lush, J., in an action in which it was sought to make a husband liable for a tort committed by his wife. The law in relation to the husband's liability for such a tort rests on a fiction which, in spite of the passing of the Married Women's Property Act, 1882, must still be recognised by the court. This is the result of the decision in *Earle* v. *Kingscote*, 1900, 2 Ch. 585. The present state of the law is so accurately stated by the learned judge in his reported judgment, 1923, 1 K.B., at p. 278, that there is no need to repeat what he there says. In this and in every similar case the question of the husband's liability resolves itself into a question of what is the true inference of law to be drawn from the facts. In other words, is the fraud of the wife which is complained of what is called in many of the reported cases a naked tort, or is it a fraud connected with the contract? If the latter, the husband is not liable. On the findings of the learned judge that the wife wrote her husband's name on the document fraudulently, the material facts may be stated thus. Holmes required a loan. Hawes was prepared to lend him money provided the signature of Mr. McNeall, the husband, could be obtained to a document whereby he pledged his life policy as security for the loan. Mrs. McNeall, the wife, in order to induce Hawes to lend the money, fraudulently wrote her husband's name on the document and handed it to Holmes in order that he might take it to Hawes. The contention for the husband is that the true inference from these facts is that the law will imply a warranty of authority on the part of the wife that she had her husband's authority to sign his name and that the document was a genuine one. Lush, J., negatived this contention. The question for decision is whether his view is the correct one or not. The exact point does not appear to have been decided, nor can I find any reference to it in the reported cases. It is this. Does the doctrine of implied warranty introduced by the decision in *Collen* v. *Wright*, 1857, 7 E. and B. 301; and 8 E. and B. 647, require for its application the presence of the essentials to the making of an ordinary contract, or is it implied by law apart from those essentials wherever the agent professes to have the authority which, in fact, he has not got? If the former, then in the present case, as the proposed lender was entirely unaware of the wife's existence, or that she had taken any part in the matter, the essentials of a contract, whether express or implied, as between him and her, are entirely absent. I do not myself think that the doctrine of *Collen* v. *Wright*, *supra*, depends for its application upon the existence of these essentials. This seems to follow from the decision of *Starkey* v. *Bank of England*, 1903, A.C. 114, and though attention was not expressly directed to this point, the language of Willes, J., in *Collen* v. *Wright*, 8 E. and B., at p. 657; of Bramwell, L.J., in *Dickson* v. *Reuter's Telegram Company*, 1877, 3 C.P.D., at p. 5; of Lindley, L.J., in *Firbank's Executors* v. *Humphreys*, 18 Q.B.D. 54, at p. 62; and of Lord Davey in *Starkey* v. *Bank of England*, *supra*, appear to me to lead to the same conclusion. Applying this language to the present case I find the representation by the wife to the intending lender, consisting in her writing her husband's signature and handing it to the intending borrower to be by him handed to the lender, and I find the intending lender acting on the representation. In these circumstances I consider that the appellant has established in the present case that, to use the language of Pollock, C.B., in the *Liverpool Adelphi Loan Association* v. *Fairhurst and wife*, 1854, 9 Exch. 422, at p. 429, the fraud complained of "is directly connected with the contract with the wife, and is the means of effecting it, and parcel of the same transaction," and as a result "the wife cannot be responsible, and the husband be sued for it together with the wife." In my opinion the appeal must be allowed with costs, the judgment must be set aside and entered for the appellant with costs.

SCRUTTON, L.J.: It was admitted that an action of deceit by the lender would lie against the wife, though, at the time of acting on the forged document, the lender did not know that she had caused it to be put forward. It was also, I think, admitted that if she had signed the document "per pro" her husband, an action under *Collen* v. *Wright*, *supra*, would have laid against her, but for the fact that she was a married woman. But it was said that no action of contract or implied warranty lay against her for simply forging the document, though with the intention that it should be shown to the lender that he might act upon it, as the lender did not know of her existence or action. In support of this, the judgment of Collins, L.J., in *Earle* v. *Kingscote*, 1900, 2 Ch. 585, 592, was relied on, protesting against an academic statement of an unreal contract when the complaint was really in tort. In that case the contract to lend money to purchase shares was made without fraud, and then the lender was induced to perform it by the fraudulent statement that the shares had been purchased, and the court held that the fraud was subsequent to and independent of the contract, in which case the contract did not relieve the husband from liability for the independent fraud. In *Cooper* v. *Whitham*, 1606, 1 Lev. 247, the fraud of the wife in representing that she was single was more real than the contract to marry by a lady already married, but the husband and wife were held free from liability. In this case I am of opinion that if a person creates, for the purpose of being shown to and acted upon as genuine by another, a false document, and the false document is so shown and acted upon, the person who acts upon it, can, when he discovers the facts, sue the author of the document (1) for a breach of warranty of genuineness under *Collen* v. *Wright*, 1857, 8 E. and B. 647, as explained in *Starkey* v. *Bank of England*, 1903, A.C. 114, or, (2) for deceit, as knowingly putting forward a false document with intent that it should be acted upon. If the author of the document is a married woman, she could not be sued on the warranty, as stated by Brett, L.J., in *Drew* v. *Nunn*, 1879, 4 Q.B.D. 661. I think that Lush, J., from whom I differ with the greatest hesitation, failed to appreciate the extent to which *Collen* v. *Wright*, *supra*, has been carried by the decision in *Starkey* v. *Bank of England*, *supra*. He was prepared to agree with the decision of Bailhache, J., in *Edwards* v. *Porter*, 1923, 1 K.B. 268; 67 SOL. J. 248, on the ground that there was in *Collen* v. *Wright* a warranty in that case, which the plaintiff could not ignore by suing in tort. But it appears to me that in this case there was a *Starkey* v. *Bank of England* warranty of the genuineness of a document signed by the wife to be put forward and acted upon as genuine, though she knew that it was not genuine, and that the lender could not ignore this by suing in tort. For these reasons, I think that the appeal of the husband should be allowed with costs, and that the judgment of Lush, J., against the plaintiff for £87 on the counter-claim should be reversed and judgment entered for him on the counter-claim with costs.

YOUNGER, L.J., (dissenting): In the judgment in *Edwards* v. *Porter* I have discussed the principles with reference to which, as it seems to me, cases of this kind ought to be decided. I can deal, therefore, very shortly with this appeal. The case appears to me to be a simpler one than *Edwards* v. *Porter*. The contractual obligations of the wife are even more shadowy. They are of a character which never yet, so far as counsel can discover, have been made the subject of an action. He can only say with reference to them, that in principle there is no reason why they should not exist and as against persons of capacity be enforceable. That Mrs. McNeall has been guilty of a gross fraud upon Mr. Hawes is not disputed, and that she and her husband were responsible to him in the damages awarded by the learned judge was not at the end contested by Mr. Barrington-Ward so far as this court was concerned except on one ground, viz.: that as the result of the extension of the doctrine of *Collen* v. *Wright*, *supra*, in *Starkey* v. *Bank of England*, *supra*, Mrs. McNeall incurred in the course of the negotiation a liability to Hawes in contract which put her fraud amongst the excepted frauds referred to in the *Liverpool Adelphi Case*, *supra*, and *Wright* v. *Leonard*, 1861, 11 C.B. N.S. 258. Now it will, I think, be agreed that that is a strong proposition. In this transaction Mrs. McNeall, so far as Hawes was concerned, was a non-existent person. So far as he knew or saw or believed, no one took any part in the transaction of this loan to Holmes except Mr. McNeall, Holmes, and himself. Mrs. McNeall played no part in it at all. The principle of *Collen* v. *Wright*, *supra*, in other words is extended to a person unknown in the transaction or otherwise to the promisee, and between these two a consensual relation is thereby established. Putting the proposition in another way, the principle of *Collen* v. *Wright*, *supra*, is extended to enable an action, consensual in its nature, to be brought against a successful forger by one victimized by his skill. It may be that such an action will lie. I do not feel called upon to decide that question one way or the other. I would only observe with reference to it, that *Starkey* v. *Bank of England*, *supra*, does not of itself seem to me to solve it. That case would be a complete authority if Holmes, and not Mrs. McNeall, were the defendant to this counter-claim. The person who in *Starkey's Case* corresponded to Mrs. McNeall was F. W. Oliver. He was not, nor was his estate, a defendant. Starkey, except that he was honest, whereas Holmes in this case was not, corresponded to Holmes, and he was the defendant

made liable. It may be that F. W. Oliver could also in that case have been made liable consensually, had he been sued. It is, however, I think, pretty clear that he would have had to be made liable in such a form of action on grounds different from those which were urged against Starkey. But I need not pursue this matter further. My opinion in this case, as in the case of *Edwards* v. *Porter*, is that even if some kind of consensual obligation can be extracted from the facts as having been entered into by Mrs. McNeall, it is not of such a character as will in this case either excuse her or her husband from the otherwise naked fraud of which she was guilty. In my judgment the learned judge in this case was right, and the appeal should be dismissed.

Appeal allowed.—COUNSEL: *Barrington-Ward*, K.C., *S. P. J. Merlin* and *Granville Sharp*; *Lord Erleigh*. SOLICITORS: *Crosse and Sons*; *Fladgate and Co.*

[Reported by T. W. MORGAN, Barrister-at-Law.]

High Court—Chancery Division.

In re **COURCIER AND HARROLD'S CONTRACT.**

Sargant, J. 9th March.

VENDOR AND PURCHASER—CONDITIONS OF SALE—RESTRICTIONS AFFECTING THE PROPERTY SOLD—MIS-STATEMENT IN—MATERIALITY—GENERAL CONDITION AGAINST COMPENSATION FOR "ERROR, MIS-STATEMENT OR OMISSION"—APPLICABILITY OF GENERAL CONDITION.

Where there is a general condition that errors, mis-statements or omissions shall not annul the sale, or be a ground for compensation, if a misdescription in the special conditions of a restriction upon the user of the property does not so far affect the subject-matter of the contract that it might reasonably be supposed that, but for that misdescription, the purchaser might never have entered into the contract at all, the condition will apply and the title will not be invalidated.

Flight *v.* Booth, 1834, 1 Bing. N.C. 370, *applied.*

This was a summons asking the question whether a purchaser had received under the conditions sufficient notice of the restrictions on user to which the property agreed to be sold was subject. By the agreement, dated the 28th day of September, 1922, the vendor agreed to sell and the purchaser agreed to purchase a freehold detached residence at Streatham for £1,800, subject to the particulars and conditions of sale under which the property had been previously offered at auction. One of the special conditions was as follows:—"The property is subject to the restrictions and stipulations following, namely, (B) that neither the land nor any existing or future building thereon shall be used for carrying on any trade or business, nor as a school, hospital, nursing home, public worship or otherwise than as a private dwelling-house, but not precluding the practice of a profession therein." One of the general conditions, which were the London conditions of sale, was as follows:—"The property is believed to be correctly described as to quantity and otherwise. If any error, mis-statement or omission shall be discovered in the particulars the same shall not annul the sale nor shall any compensation be allowed by the vendor in respect thereof." There was in fact a mistake in the special condition, and, instead of the words "public worship," it should have read "or public institution or charity nor for holding public meetings nor for public worship."

SARGANT, J., after stating the facts, said: The first question is whether, notwithstanding the omission in the conditions, the restrictions on the user of the property were sufficiently disclosed to the purchaser. Examples have been suggested of uses of the property possible under the restrictions disclosed, but not under the restrictions as they are. I have come to the conclusion that there is, in practice, no difference between the uses of the property possible under the one set of restrictions and the other. Even if there had been some difference, the question remains whether the provisions in the London conditions of sale as to "any error, mis-statement or omission" do not apply. That condition refers only to the particulars, but it cannot be construed so narrowly as not to apply also to the special conditions of sale. The chief question is whether the conditions apply to anything except physical misdescriptions. I have come to the conclusion that they do, and I am glad to find that the same view is taken in "Williams on Vendor and Purchaser," 3rd edition, p. 682. *Flight* v. *Booth*, *supra*, shows, however, that the conditions will not apply "where the misdescription, although not proceeding from fraud, is in a material and substantial point so far affecting the subject-matter of the contract that it may reasonably be supposed that, but for such misdescription, the purchaser might never have entered into the contract at all." Applying that test here, I come to the conclusion that the contract applies. I must hold that a good title has been shown in reference to those restrictions.—COUNSEL: *Greene*, K.C., and *R. J. A. Morrison*; *Rolt*, K.C., and *A. Adams*. SOLICITORS: *Shelton & Co.*; *Leslie Williams and Alder*.

[Reported by L. M. MAY, Barrister-at-Law.]

RIDER *v.* **FORD.** Russell, J. March 12th and 13th.

LANDLORD AND TENANT—LEASE—AGREEMENT FOR—OPTION TO PURCHASE FREEHOLD OR CALL FOR LEASE—TIME NOT SPECIFIED—PERPETUITY RULE.

Where, under an agreement of tenancy, an option is given and no time limit is fixed for the exercise thereof, the option continues so long as the relationship of landlord and tenant subsists, even though the original term has expired.

Moss *v.* Barton, 1866, L.R. 1 Eq. 474.

Such an option is invalidated by the rule against perpetuities if it be to purchase the freehold of the property, unless it can be construed as giving only an option to the lessee personally or to his assignee during his lifetime, but a right to call for a lease for ninety-seven years is not invalidated by the rule against perpetuities, and can be exercised so long as the relationship of landlord and tenant subsists.

This was an action for a declaration that the defendant was not entitled to exercise any option, either to buy the freehold or to call for a lease of No. 2 Shepherd's Green, on the terms set out in a certain letter of the 4th of June, 1907 The facts were as follows:—The plaintiffs, who were builders, were willing to build a house for the defendant upon certain terms. On the 4th of June, 1907, the defendant entered into an agreement with them on the terms set out in the following letter: "*Re* No. 2 Shepherd's Green. T. Rider & Son, Southwark, S.E., June 4th, 1907. We understand from a letter we have received from Mr. May yesterday that you have decided to take an additional ten feet frontage at the above. The whole matter therefore stands thus—the house to be built on the plot of land adjoining Mr. Watts' in accordance with the plans and specifications prepared by Mr. May (which we had both better sign), and to be completed as nearly as possible by Christmas next. You to take the house for 3, 5, or 7 years at the rent of £147 per annum and to have the option of purchasing either the freehold for £2,900 or a lease of 97 years (ground rent £20) for £2,400. If you will send us a letter accepting these terms it seems to us that this is all that will be necessary." On the 12th June, 1907, the defendant, by letter addressed to the plaintiffs' firm, confirmed the above terms, but no formal document embodying them was ever executed. On 25th March, 1908, the defendant went into possession of the said premises under this agreement, and after the expiration of the seven years, continued in possession as a tenant from year to year. The plaintiffs, by notice dated the 26th day of May, 1922, required the defendant to give up possession of the premises on the 25th of March, 1923. The defendant thereupon claimed to be entitled to exercise the above option as he was still in possession of the premises, with the consent of the plaintiffs. He claimed that the plaintiffs had never called upon him to elect whether he would exercise the said option or not, and that he had never abandoned it.

RUSSELL, J., after stating the facts, said:—Under the agreement two options were given without any limitation as to the time within which they could be exercised. In these circumstances the options continue so long as the relationship of landlord and tenant exists between the parties, and in spite of the fact that the original term of seven years has expired: see *Moss* v. *Barton*, *supra*, *Buckland* v. *Papillon*, 1866, L.R. 1 Eq. 477, and 1866, L.R. 2 Ch. 67, 70. The case of *In re Leeds and Batley Breweries and Bradbury's Lease*, 1920, 2 Ch. 548, merely decided that where an option to purchase the reversion of a lease is given to a tenant conditionally on the option being exercised six months before the expiration of the term, it could not be exercised eight years after the expiration of the term, although the tenant had remained on as a tenant from year to year. The rule against perpetuities would invalidate the option to purchase the freehold unless the agreement was read as giving only an option to the defendant personally or to his assignee, provided the option was exercised in the defendant's life. I am unable to read the document in either sense, and I hold that the defendant would not be entitled to specific performance in the event of his exercising his option to purchase the freehold. It is admitted that a covenant for the renewal of a lease is outside the rule against perpetuities, but the plaintiffs contend that this is an option to purchase a lease for ninety-seven years, and that after the end of the original term an option to purchase cannot be implied. I am unable to accept this contention. The expression "purchase a lease" is inaccurate, but means that the defendant is to have an option of obtaining a demise of the premises for a term of ninety-seven years. In regard to an option to purchase the fee or to take a fresh lease of the premises on new terms, the position of a tenant who holds over and becomes a tenant from year to year, is in principle the same as that of a similar tenant in regard to an option to obtain a fresh lease on the same terms as the old. There is no reason in law why the rule against perpetuities should not be the same in the case of a right to call for a new lease on new terms as in the case of a right to call for a new lease on the old terms. I am of opinion that the right to call for a lease of ninety-seven years is not invalidated by the rule against perpetuities, and can be exercised by the defendant.—COUNSEL: *J. B. Hurst*, K.C., and *Wilfrid M. Hunt*; *Courthope Wilson*, K.C., and *R. H. Hodge*. SOLICITORS: *Sewell, Edwards & Nevill*; *Lawrance, Webster, Messer & Nicholls*.

[Reported by L. M. MAY, Barrister-at-Law.]

High Court—King's Bench Division.

SCHAVERIEN *v.* **CORBETT.** Salter, J. 2nd March.

MONEYLENDER—REGISTRATION—DURATION—REQUEST FOR CANCELLATION DURING PERIOD—NO STATUTORY PROVISION FOR CANCELLATION—SUBSEQUENT LOAN—BORROWER REPUDIATES LIABILITY ON GROUND OF NON-REGISTRATION OF MONEYLENDER—MONEYLENDERS ACT, 1900, 63 & 64 Vict. c. 51, ss. 2, 3.

Before the expiration of the statutory period during which the registration of a moneylender under the Moneylenders Act, 1900, was valid, a registered moneylender sought cancellation of the registration. On being informed that there was no statutory provision authorising such cancellation, but that his letter of application had been attached to the register, he decided to continue to carry on his business during the remainder of the period of registration. He afterwards commenced an action against the borrower of two sums of money

which he had lent during the period subsequent to his application for cancellation. The defendant alleged that the plaintiff was not a registered moneylender at the date of the transactions.

Held, that the moneylender was at the date of the transactions a registered moneylender, and that the attaching of his application to the register did not constitute a cancellation of his registration.

Action under Order XIV, r. 8.

The plaintiff, who was a moneylender, commenced an action against a borrower for the recovery of the sums of £1,060 and £265, representing the value of two promissory notes, together with interest. The plaintiff's registration under the Moneylenders Act, 1900, had been renewed in March, 1921. By s. 2 of that statute it is provided: "(1) A moneylender as defined by this Act (*a*) shall register himself as a moneylender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of Inland Revenue, under his own or usual trade name, and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of moneylender; and (*b*) shall carry on the money-lending business in his registered name and in no other name and under no other description and at his registered address or addresses and at no other address; and (*c*) shall not enter into any agreement in the course of his business as a moneylender with respect to the advance and repayment of money, or take any security for money in the course of his business as a moneylender otherwise than in his registered name . . ." Section 3 provides "(2) The registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal." In October, 1921, the plaintiff determined to give up the business and wrote to the Inland Revenue Office requesting that his registration might be cancelled, as he intended to give up business. In reply he was informed that no statutory provision existed for such cancellation, but that his letter had been attached to the register. He then resolved to carry on the business until the expiration of the current three years, and during that period he lent to the defendant the money above referred to on the security of the two promissory notes. In the action it was alleged on behalf of the defendant, *inter alia*, that at the time of the transactions the plaintiff had given up the business and, being no longer a registered moneylender, was estopped from recovering the money.

SALTER, J., said that the plaintiff's application for cancellation had not altered his status as a registered moneylender, and that his registration had not thereby been cancelled. In his lordship's view the plaintiff was still on the register. The defence failed on that ground, and on other grounds, and the plaintiff was entitled to judgment.—COUNSEL: *J. B. Matthews*, K.C., and *R. F. Levy*, for the plaintiff; *J. A. Compston*, K.C., and *E. Austin Farleigh*, for the defendant. SOLICITORS: *Isadore Goldman & Son; Leoni & Deards*, for *E. E. C. Cooper*, Bourne End, Bucks.

[Reported by J. L. DENISON, Barrister-at-Law.]

In Parliament.

House of Commons.

Questions.

PRIVY COUNCIL (JUDICIAL COMMITTEE).

Mr. LANSBURY (Poplar) asked the Attorney-General if he can state what official is responsible for convening the Judicial Committee of the Privy Council for the performance of its judicial functions and what official is responsible for convening the House of Lords when that House is sitting as the final Court of Appeal; and whether he will introduce legislation limiting the exercise of judicial functions by members of the House of Lords and of the Judicial Committee of the Privy Council to members who are under seventy years of age?

The ATTORNEY-GENERAL (Sir Douglas Hogg): The composition of the House of Lords when sitting judicially and of the Judicial Committee is determined on any particular occasion by arrangement amongst the Lords and others who are qualified to sit on these tribunals. The answer to the second part of the question is, certainly not. The effect of the hon. Member's suggestion would be to deprive both tribunals of the assistance of judges of the greatest learning, skill, and experience, whose services to the State are of the greatest value, and without whose help—which in many cases is rendered without payment—the tribunals could not exercise their functions.

SIR MAURICE HANKEY.

Mr. SHORT (Wednesbury) asked the Prime Minister whether Sir Maurice Hankey is to act as Clerk to the Privy Council, and, if so, at what salary; and what other secretaryships he holds and the salaries attaching thereto?

THE PRIME MINISTER: Sir Maurice Hankey has been appointed Clerk of the Privy Council, without additional remuneration, in succession to Sir Almeric Fitzroy, who retires on 31st May next. Sir Maurice is Secretary of the Cabinet, which post he holds in conjunction with the secretaryship of the Committee of Imperial Defence, and his salary is £3,000 a year. The hon. Member is, no doubt, aware of the constitutional evolution of the Cabinet from the Privy Council, and the appointment of the same officer to be secretary, or clerk, both to the Cabinet and to the Privy Council, is in conformity with historical development. After 31st May next the remuneration hitherto assigned to the post of Clerk of the Privy Council will cease, and, therefore, in future years there will be a saving of that amount. (9th April.)

EX-ENEMY PROPERTY.

Mr. HANNON (Moseley) asked the President of the Board of Trade what is the total amount paid to the Controller of the Clearing House in respect of realisations of the property in the United Kingdom of former enemy nationals; the estimated value of assets still available for realisation; and in what way these sums have been allocated?

Sir P. LLOYD-GREAME: As the answer is rather long, I will, with my hon. Friend's permission, have it circulated in the Official Report.

Following is the answer:

The total amount paid to the Controller of the Clearing Office by the Custodian of Enemy Property in respect of realisation of German property in the United Kingdom up to the end of last month was £33,600,000. It is not possible to give any reliable estimate of the value of the unrealised German assets. The above sum has been allocated in accordance with the principles laid down in paragraph 1 (xvi) of the Treaty of Peace Order, 1919, as amended by the Treaty of Peace (Amendment) Order, 1920. The proceeds of liquidation of ex-enemy property credited to the Austrian, Hungarian and Bulgarian administrations up to the same date were:—

	£	s.	d.
Austrian	987,856	19	8
Hungarian	250,064	3	9
Bulgarian	516,759	13	2

and these moneys have been allocated to the payment of dividends on the debts and claims of British nationals. It will be impossible to estimate the value of the unliquidated property until the numerous conflicting claims to ownership have been determined.

KING'S PROCTOR'S DEPARTMENT.

Mr. RAWLINSON (Cambridge University) asked the Attorney-General what is the total number of the staff employed in the King Proctor's Department; and what the total amount of the salaries and allowances to the Department come to?

The ATTORNEY-GENERAL (Sir Douglas Hogg): The total number of the staff employed in the King's Proctor's Department (inclusive of the Procurator-General) is 13, and the total amount of the salaries and allowances (including bonus) is £4,983. The Procurator-General receives no salary as such, but is paid a salary as Treasury Solicitor.

EMPTY HOUSES (RATING AND TAXATION).

Mr. T. THOMSON (Middlesbrough, West) asked the Minister of Health if he will favourably consider taking powers in his new Housing Bill whereby empty dwelling-houses may be both rated and taxed so long as they are withheld from occupation?

The MINISTER OF HEALTH (Mr. Neville Chamberlain): I have carefully considered this suggestion, but I cannot undertake to introduce legislation for the purpose in view.

Mr. THOMSON: Cannot the right hon. Gentleman suggest some other means whereby use may be made of unoccupied houses?

Mr. CHAMBERLAIN: I shall have a proposal to make in the course of this Session with a view to making use of them.

ASSIZES.

Mr. FOOT (Bodmin) asked the Attorney-General which of the recommendations of the Committee on Assizes he proposes to adopt, and when the House will be given the opportunity of discussing the suggested changes?

The ATTORNEY-GENERAL: The recommendations to be adopted will be embodied in a Bill which it is hoped to introduce at an early date. I cannot make any announcement until then. (11th April.)

ACTIONS AGAINST THE CROWN.

Mr. ERNEST EVANS (Cardigan) asked the Attorney-General whether his attention has been drawn to the comments made by members of the Court of Appeal on the unsatisfactory state of the law in regard to proceedings taken by and against Government Departments; and whether he will take the necessary steps to make the procedure more simple and uniform?

Mr. FRANK GRAY (Oxford) asked the Attorney-General whether, having regard to the remarks of Lord Justice Scrutton, in the recent case of *The Marshall Shipping Company, Limited* v. *The Board of Trade*, as to the necessity for legislation, in the interests of the public, to enable them to readily and conveniently call in question the actions and omissions of Government Departments, he will advise His Majesty's Government to initiate such legislation forthwith?

The SOLICITOR-GENERAL (Sir Thomas Inskip): The whole question of proceedings by and against the Crown, and by and against Government Departments, is under the consideration of a Committee over which the Lord Chief Justice is presiding and of which I am a member. I will call the attention of the Committee to the judgment in this case.

Sir K. Wood (Woolwich, West): Can the Solicitor-General say whether in this case the Government Department did not plead that in order to be successful in proceedings against the Board of Trade that every member of the Board, including the Archbishop of Canterbury, must be served with a process, and did not the Court of Appeal adversely comment upon the state of the law?

The Solicitor-General: The hon. Member has stated something like the contentions of the case, but I have not before me at the moment the accurate information. (18th April.)

Bills Presented.

Factories and Workshops (Bakehouses) Bill—"to prohibit night work in bakehouses, and for purposes connected therewith": Mr. Groves, on leave given. [Bill 81.] (10th April.)

Housing &c. (No. 2) Bill—"to amend the enactments relating to the housing of the working classes (including the amendment and revocation of building bye-laws), town planning, and the acquisition of small dwellings": Mr. Neville Chamberlain. [Bill 82.]

Employment of Women, Young Persons and Children (Amendment) Bill—"to amend Section two of the Employment of Women, Young Persons, and Children Act, 1920": Mr. Rhys Davies. [Bill 83.] (11th April.)

Movable Dwellings Bill—"to provide for the regulation of movable dwellings": Sir Courtenay Warner. [Bill 86.] (16th April.)

Co-Partnership Bill—"to promote the more general adoption of co-partnership between capital and labour by statutory and other companies": Mr. Peto, on leave given. [Bill 92.]

Farm Servants' Holiday (Scotland) Bill—"to regulate the leisure time allowed to farm servants in Scotland; and for other purposes connected therewith": Mr. Westwood, on leave given. [Bill 93.]

Adoption of Children Bill—"to make further provision for the adoption of children by suitable persons": Sir Leonard Brassey. [Bill 90.]

Marriage (Prohibited Degrees of Relationship) Bill—"to amend the Law relating to the marriage of persons with their nephew or niece by marriage": Major Entwistle. [Bill 91.] (17th April.)

Legislation in Progress.

9th April. Dangerous Drugs and Poisons (Amendment) Bill—As amended in Standing Committee, considered and read a Third time.

Salmon and Freshwater Fisheries Bill.—After debate, read a Second time.

Special Constables Bill.—Read a Second time by 218 to 122 and committed to a Standing Committee by 205 to 122.

Army and Air Force (Annual) Bill.—Read a Second time by 158 to 33 and committed to a Committee of the Whole House.

12th-13th April. Army and Air Force (Annual) Bill.—Considered in Committee from about 11 p.m. on 12th to 12 noon on 13th April. Among other amendments, a clause for the abolition of the death penalty, moved by Mr. Lawson, after debate rejected by 175 to 103; and a clause giving an appeal to the Court of Criminal Appeal, assisted by one or more military assessors, against a sentence of death by court-martial, moved by Mr. Lansbury, after debate rejected by 201 to 127.

16th April. Ways and Means considered in Committee. The Chancellor of the Exchequer, Mr. Baldwin, made his Budget proposals. Resolutions were passed for:—

Rebate on Beer Duty (Excise).
Do. (Customs).
Reduction of Table Water Duty.
Continuation of Duties Customs.
Continuation of Additional Medicine Duties (Excess).

And as to Income Tax and Estate Duty, as follows:—

Charge of Income Tax.

Resolved,

"That—

(*a*) Income Tax shall be charged for the year beginning the sixth day of April, nineteen hundred and twenty-three, at the rate of four shillings and sixpence in the pound, and the same Super-tax shall be charged for that year as was charged for the year beginning the sixth day of April, nineteen hundred and twenty-two; and

(*b*) subject to any adaptations or modifications contained in any Order in Council made in connection with the establishment of the Irish Free State, the like provisions shall have effect with respect to the Income Tax and Super-tax so charged as had effect with respect thereto for the year beginning the sixth day of April, nineteen hundred and twenty-two.

And it is declared that it is expedient in the public interest that this Resolution shall have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913."

Income Tax in case of Assurance Companies.

Resolved,

"That—

(*a*) where an assurance company carries on both ordinary life assurance business and industrial life assurance business, the business of each such class shall for the purposes of the Income Tax Acts be treated as though it were a separate business; and

(*b*) for the purpose of calculating the relief from Income Tax to which an assurance company is entitled under Section thirty-three of the Income Tax Act, 1918, there shall be deducted from the amount treated as expenses of management (in addition to any other amounts now required to be deducted therefrom) the amount of any profits arising from the business of granting annuities upon human life.

And it is declared that it is expedient in the public interest that this Resolution shall have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913."

Assessment to Income Tax under Schedule E of Leave Pay, etc.

Resolved,

"That—

(*a*) Income Tax chargeable in respect of any emoluments, pension or annuity payable by or through any public Department in Great Britain or Northern Ireland, but otherwise than out of the public revenue of Great Britain and Northern Ireland or the public revenue of Northern Ireland, to a person who is or has been employed in the service of the Crown out of Great Britain and Northern Ireland in respect of that service, or chargeable in respect of any pension or annuity so payable to the widow, child, relative or dependant of any such person shall be chargeable under Schedule E, and shall be deducted accordingly out of the emoluments, pension or annuity in respect of which it is chargeable; and

(*b*) any deduction on account of Income Tax made at any time before the date of this Resolution which would have been properly made if this Resolution had been in force at the date of the making of the deduction and had referred to the United Kingdom instead of to Great Britain and Northern Ireland or Great Britain or Northern Ireland, shall be deemed to have been properly made under Schedule E.

And it is declared that it is expedient in the public interest that this Resolution shall have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913."

Estate Duty.

Resolved,

"That where property situate out of Great Britain is bequeathed to or settled on different persons in succession and legacy duty or succession duty is payable thereon, such duty shall for the purposes of Sub-section (2) of Section two of the Finance Act, 1894, be deemed to be payable in respect of the property on the death of each of those persons in succession, notwithstanding that the whole amount of the duty is paid on one death only as in the case of a legacy to one person."

Cotton Industry Bill.—Read a Second time, and committed to a Standing Committee.

17th and 18th April. Budget Proposals further considered.

Societies.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held on the 12th inst., Mr. J. F. Rowlatt in the chair. The other Directors present were:—Sir Roger Gregory, J.P., and Messrs. W. F. Cunliffe, T. S. Curtis, E. F. Knapp-Fisher, and P. J. Skelton (Manchester). £760 was distributed in grants of relief. Twenty-five new members were admitted, and other general business transacted.

Gray's Inn Moot Society.

NEGLIGENCE AND MEASURE OF DAMAGE.

A Moot was, says *The Times*, held at Gray's Inn on 16th April before the Hon. Mr. Justice Sankey and Benchers of the Inn. The following case was argued:—

A herd of cattle belonging to Farmer A was being driven along an occupation road to some fields. The road crossed a railway siding on the level, and while the cattle were passing over, some boys, who were trespassing on the railway, accidentally sent some trucks, which had been left unbraked on an incline, into the siding. Two of the cattle were killed and the rest were separated from their drovers and scattered. Six were found lying dead or dying on the railway, having been run over by a train. It appeared that they had gone along the occupation road to and across B's garden, the fences of which were defective, and so on to the railway line.

At the time of the accident the sale of cattle was controlled by the Government and there was no real market value, no one being allowed to sell cattle at more than £x per head; but dealers reasonably expected the control to be taken off shortly, and A had, in fact, imported the cattle from France two days before the accident at a cost of 20s. per head over the control price. The control was lifted a week after the accident, and the market value then became 40s. per head over the control price.

A sued the railway company and judgment was entered for him for damages on the loss of eight of the cattle, at a rate of 40s. a head over the control price. The railway company appealed, alleging that they were not liable for all the cattle and that the measure of damage adopted by the Court below was wrong.

Mr. J. L. Stone and Mr. Johnson were counsel for the appellants; and Mr. H. Goitein appeared for the respondents, with Mr. Theeman.

Mr. Justice Sankey, in delivering judgment dismissing the appeal, said that the case raised points similar to, though not identical with, those in the cases of *Sneesby* v. *Lancashire and Yorkshire Railway Company*, 1 Q.B.D. 42, and *McDowall* v. *Great Western Railway Company*, 1903, 2 K.B. 331, but the facts were to be distinguished from both. In his view the principle of law to be applied was this—the court had to ascertain what was the effective cause of the accident? Whose fault was it? The court below must have had evidence before it upon which it was satisfied that it was some act of the railway company's which was the effective cause of the accident. The railway company did leave the trucks, not only unbraked, but on a dangerous incline. This was evidence of negligence upon which the jury were entitled to find that the acts of the railway company were the effective cause of the accident. The case fell within *Sneesby's Case*, not *McDowall's*.

As to the question of damages, it was not possible to distinguish, having regard to *Sneesby's Case*, between the cattle killed at the level crossing and those killed elsewhere, but the measure of damage presented a real difficulty. This being a case, not of contract, but of tort, there was no doubt that the farmer was entitled to recover the price he had given for the cattle. The question of difficulty was the extra 40s. per head. He did not think it could be said that the farmer was entitled to recover the whole amount, but the jury would be entitled to take it into consideration. Damages in tort were rather looser than in contract, and it was not wise to alter the judgment in regard to them.

The New Postal Rates.

The following changes, according to a statement issued by the Postmaster-General, as printed in *The Times* (18th inst.) will take effect on and from Monday, 14th May, 1923:—

INLAND LETTERS.

PRESENT RATE:—	
Not exceeding 1oz.	1½d.
Exceeding 1oz. but not exceeding 3oz.	2d.
For every additional 1oz. or fraction thereof	½d.
NEW RATE:—	
Not exceeding 2oz.	1½d
For every additional 2oz. or fraction thereof	½d.

INLAND PRINTED PAPERS.

PRESENT RATE:—	
Not exceeding 1oz.	½d.
Exceeding 1oz. but not exceeding 2oz.	1d.
And thereafter at the rate of ½d. per 2oz. or fraction thereof.	
NEW RATE:—	
Not exceeding 2oz.	½d.
And thereafter at the rate of ½d. per 2oz. or fraction thereof.	

INLAND PARCELS.

A reduction of 3d. per parcel as follows:—

	Present Scale.	New Scale.
	s. d.	s. d.
Up to 2lb.	9	6
„ 5lb.	1 0	9
„ 8lb.	1 3	1 0
„ 11lb.	1 6	1 3

FOREIGN LETTERS.

The letter rate for foreign countries (except the United States of America, Egypt, and Tangier) is:—

Not exceeding 1oz.	3d.
For every additional ounce or fraction thereof	1½d.
The new rate will be:—	
Not exceeding 1oz.	2½d.
For every additional ounce or fraction thereof	1½d.

BRITISH POSSESSIONS GENERALLY, TO H.M. SHIPS OF WAR ABROAD, THE UNITED STATES OF AMERICA, EGYPT, AND TANGIER.

PRESENT RATE:—	1½d. per ounce.
NEW RATE:—	
Not exceeding 1oz.	1½d.
For every additional ounce or fraction thereof	1d.

Divorce and Alimony.

The following have appeared in *The Times* under "Points from Letters": It is rumoured that the Bill for putting the sexes on equality in regard to adultery for divorce will become law about Whitsuntide. It would perhaps be as well for the legislature to pay some attention to the question of alimony. As the law now stands a wife can obtain permanent alimony from the husband which is not reduced in the event of her marrying again, though re-marriage is usually the object of her divorce proceedings. There seems a serious danger that some unscrupulous women may marry one husband after another, and by entrapping each husband into one act of adultery may obtain quite an undue amount of alimony from the various husbands concerned. Some safeguard should be inserted in the Bill against this danger.—Mr. E. S. P. Haynes, 9, New-square, Lincoln's Inn, W.C.2.

The question raised by Mr. Haynes regarding permanent alimony to divorced wives is important. The experience of the divorce law of Scotland has frequently been mentioned as a safe guide to follow. There the number of petitions brought by wives had been far less than the number brought by husbands. Apparently under Scottish law the innocent person in a divorce is put in the position of a surviving spouse. I think I am correctly representing this law by adding that should the innocent party be the wife, she would thus become entitled to receive the immediate payment of a feu, *e.g.*, a right given by the law of Scotland to a widow of one-third of the income of the heritable estate of her husband—Mr. P. W. D. Hall, 55, Red Lion-street, W.C.

The Surveyors' Institution.

The annual dinner of the Surveyors' Institution was held on 16th April at the Connaught Rooms. Mr. J. McClare Clark, President of the Institution, was in the chair.

Sir Edwin Savill proposed the toast of "His Majesty's Ministers."

Sir Robert Sanders, Minister of Agriculture, replying, said he thought that what the country wanted was to avoid adventures and sensations. He would not use the word "tranquillity," but there was a desire for peace and quiet. The feeling of the business community was that if we had peace and quiet the expenses of the country would go down, and trade would have a chance. He did not think those expectations had been altogether falsified. The complaint was levelled at the Government that they were doing nothing. He was afraid that before the end of the Session the complaint would be that they were attempting to do too much.

Lord Ernle proposed the toast of "The Surveyors' Institution," and the Chairman, in replying, said that the Institution, in conjunction with the Auctioneers' Institute and the Land Agents' Society, had drafted a Bill, which had been introduced in the House of Commons by Sir Edgar Chatfeild Clarke, for the registration of the profession. Its object was to protect the public from unknowingly employing unqualified persons on the important duties devolving upon surveyors, land agents, and auctioneers, and he asked those present to use their influence for the promotion of the measure.

The funeral of Mr. Nigel Charles Alfred Neville, stipendiary magistrate for Wolverhampton and South Staffordshire since 1885, took place on 16th April, at Shenstone, near Lichfield, where he was born seventy-four years ago. He was at Uppingham and St. John's, Cambridge, and was called by the Inner Temple in 1873.

Criminal Responsibility of the Insane.

MEMORANDUM BY THE COUNCIL OF THE BRITISH MEDICAL ASSOCIATION.

The following are extracts from the Memorandum of Evidence on Legal Responsibility for Crime submitted by the British Medical Association to Lord Justice Atkin's Committee, taken from the *British Medical Journal*, of 24th March :—

(B) MEMORANDUM OF EVIDENCE.

The Memorandum of Evidence which the Sub-Committee, on behalf of the Council of the Association, desires to lay before the Committee appointed by the Lord Chancellor is as follows :—

Sub-Section 4 of Section 2 of Criminal Lunatics Act, 1884.

I. The Council, realising its very great importance, has given careful consideration to this matter, and has come to the conclusion that it cannot suggest any improvement in the method laid down in Sub-Section 4 of Section 2 of the Criminal Lunatics Act 1884 which reads as follows :—

(4) In the case of a prisoner under sentence of death, if it appears to a Secretary of State, either by means of a certificate signed by two members of the visiting committee of the prison in which such prisoner is confined, or by any other means, that there is reason to believe such prisoner to be insane, the Secretary of State shall appoint two or more legally qualified medical practitioners, and the said medical practitioners shall forthwith examine such prisoner and inquire as to his insanity, and after such examination and inquiry such practitioners shall make a report in writing to the Secretary of State as to the sanity of the prisoner, and they, or the majority of them, may certify in writing that he is insane.

Legal Responsibility for Crime.

II. The Council of the Association is of opinion that the following might be accepted by the Medical Profession as a fair definition of responsibility for crime :—

An act may be a crime although the mind of the person who does it is affected by disease or defective power if such disease or defect does not in fact prevent him :—

(a) from knowing and appreciating the nature and quality of his act or the circumstances in which it is done ; or

(b) from knowing and appreciating that this act is wrong ; or

(c) from controlling his own conduct unless the absence of the power of control is the direct and immediate consequence of his own default ;

but no act is a crime if the person who does it is at the time it is done prevented either by defective mental power or by any disease affecting the mind :—

(a) From either knowing or appreciating the nature and quality of his act or the circumstances in which it is done ; or

(b) From either knowing or appreciating that the act is wrong ; or

(c) From controlling his own conduct, unless the absence of the power of control is the direct and immediate consequence of his own default.

N.B.—" Wrong " may mean (a) morally wrong ; (b) illegal.

Evidence as to Mental Condition of Accused Persons.

III. The Council of the Association is of opinion that the following Standing Order issued by the Prison Commissioners, which is understood to apply to prisoners who have been committed for trial but not yet tried, should be embodied in the official Prison Rules :—

302. (1) In the case of an untried prisoner, especially if charged with an offence of a grave nature, the Secretary of State desires that the prisoner's insanity shall, if possible, be publicly decided by the verdict of a jury, and that the prisoner shall, for this purpose, be left to stand his trial, unless there be strong reasons to the contrary.

(2) When immediate removal to an asylum is unnecessary, the Governor will merely forward the report of the Medical Officer to the Prison Commissioners, saying that it is not proposed to obtain the usual certificate of insanity, and will state the probable date of trial.

(3) When removal to an asylum appears to the Medical Officer to be, for special reasons, necessary, the usual certificate will be obtained and forwarded, as directed in Order 301. In filling up the certificate the probable date of the trial will be added to the particulars of commitment, and the report of the Medical Officer, setting out the nature of the insanity and the necessity for immediate removal, will be enclosed, together with a newspaper report of the Police Court proceedings. If this latter is not procurable, a short report of the particulars of the prisoner's crime will be furnished.

(4) When a prisoner awaiting trial has been certified to be insane, or is believed by the Medical Officer to have been insane on reception, or when there is any doubt as to his mental condition, the Medical Officer will furnish a report in writing to that effect to the Governor, who will forward it to the Clerk of Assize or Clerk of the Peace, as the case may be. In all cases when there is any reason to suppose that questions are likely to arise in Court as to the mental state of the prisoner, the Medical Officer will attend to give evidence if required, whether he gets a subpœna or not.

IV. The Council of the Association suggests that, wherever a report from the prison Medical Officer as to the mental state of the prisoner is communicated to the Clerk of the Court, it should be the duty of the Clerk to furnish a copy of the Report to Counsel or the solicitor acting for the prosecution and defence respectively.

Position of Persons found " Guilty but Insane."

V. The Council of the Association is of opinion that every person found " Guilty but Insane " should have the same right of appeal as is conferred by the Criminal Appeal Act on persons convicted on indictment ; provided that if in any appeal brought by such person the Court should be of opinion that the verdict should be set aside so far as the finding of insanity is concerned, the Court should have the power to order a new trial.

Persons found " Unfit to Plead."

VI. The Council of the Association is of opinion that persons found " Unfit to Plead " by the verdict of a jury and ordered to be detained, should be entitled, whilst so detained, at any time on proper conditions to apply to a Judge of the High Court to order the re-trial of the issue as to fitness to plead.

(*It is understood that the rules by which such applications would be governed would need to be framed by the appropriate authority.*)

Medical Officers of Prisons.

VII. The Council of the Association has given very careful consideration to the question of the status of Medical Officers of Prisons and wishes particularly to emphasise that it is desirable that such Medical Officers should have had experience in the diagnosis and treatment of disorders and defects of the mind.

Companies.

Alliance Assurance Company, Limited.

The Directors of the Alliance Assurance Company, Limited, have resolved to declare at the Annual General Court, to be held on the 9th May, 1923, a dividend of 14s. per share (less income tax) out of the profits and accumulations of the Company at the close of the year 1922.

Six shillings per share (less tax) was paid in January last, as an interim dividend, and the remaining 8s. per share (less tax) will be payable on and after the 5th July next.

Obituary.

Mr. J. H. Etherington-Smith.

Mr. John Henry Etherington-Smith, F.S.A., who was successively Recorder of Newark for fifteen years and of Derby for nineteen years, till his retirement in 1918, died on 15th April, aged 82. He was at Repton and University College, Oxford, took classical honours, and was called by the Inner Temple, of which he was elected a bencher in 1900. For twenty-five years he was in the Leicestershire Yeomanry. He was interested in archæology and was one of the Wordsworth (Dove Cottage) trustees. Though he was a good oar, he never got his " Blue " at Oxford, but he was the father of two " Blues "—the late Mr. R. B. Etherington-Smith, F.R.C.S., who rowed for Cambridge, and Mr. T. B. Etherington-Smith, who rowed for Oxford.

Legal News.

Information Required.

Miss MARY SAWYER, deceased.—Information is required as to any Wills or Codicils made by Miss Mary Sawyer, late of 39, Gloucester-terrace, Hyde Park ; of 17, Russell-road, Kensington, and 1 Gloucester-terrace, Hyde Park, since the 19th of March, 1920.—Please communicate with Messrs. COLLYER-BRISTOW & Co., 4, Bedford-row, W.C.1, Solicitors.

Information is required as to the whereabouts of **Edward Henry Huggett Weston,** formerly of " Ballingdon," Sudbury, Suffolk, who left England nearly forty years ago, but heard of in 1902 at 448, Mott Avenue, New York. He was last heard of in October, 1907, at 824, Flatbush Avenue, Flatbush, Long Island, U.S.A. If Mr. Weston, or, if dead, his next-of-kin will communicate with Frederick John Argles, Solicitor, 12, Mill-street, Maidstone, Kent, England, he or they will hear of something to his or their advantage.

Dissolutions.

HENRY GEORGE BAILY and CHARLES SYDNEY MOORE, Solicitors, 13, Warrior-square, St. Leonards-on-Sea, Sussex (Henry G. Baily & Moore), 31st day of December, 1922.

HERBERT STROUD and MURRAY NEWTON PHELPS (Stroud & Co.), 15, Church-street, Rugby, in the County of Warwick, 17th day of March, 1923, on the retirement of Mr. Murray Newton Phelps from practice. Mr. Herbert Stroud will continue to carry on the business at 15, Church-street, Rugby aforesaid, and the business name will remain unchanged.

RICHARD AMPHLETT GARDNER, JAMES FRANCIS ADAMS BECK, JOHN CYRIL PERRY, and GRAHAM CUNNINGHAM, Solicitors, 24, Lime-street, in the City of London (Parson, Lee & Co.), 31st day of December, 1922, so far as regards the said Richard Amphlett Gardner, who retires from the firm. The said James Francis Adams Beck, John Cyril Perry, and Graham Cunningham will continue the said business under the present style or firm of Parson, Lee & Co.

WALTER PERKS, THOMAS HENRY TERRY, and EDMUND MELLIAR SMITH, Solicitors, 85, Gracechurch-street, E.C.3 (Ward, Perks & Terry), 7th day of April, 1923. The said Walter Perks and Thomas Henry Terry will continue to practise, under the style of Ward, Perks & Terry, at 85, Gracechurch-street, E.C.3, and the said Edmund Melliar Smith will practise, under the style of Ward & Melliar Smith, at 35, Queen Victoria-street, E.C.4. [*Gazette*, 10th April.

HERBERT THORNTON PULLAN, WALTER PULLAN, REGINALD CHARLES DAVIES, and JOHN BURROWS, Solicitors, 31, Bond-street, Leeds (Pullan, Davies & Burrows), 31st day of March, 1923, so far as concerns the said Walter Pullan, who retires from the said firm as from that date. The said Herbert Thornton Pullan, Reginald Charles Davies and John Burrows will continue to practise in partnership under the above-named style or firm of Pullan, Davies & Burrows. [*Gazette*, 13th April.

General.

Lord Justice Younger has been elected Chairman of the Directors of the Royal Caledonian Schools, Bushey, Herts.

Mr. George Cosens, of Woodleigh, Crystal Palace Park, Sydenham, and 5 Laurence Pountney-hill, E.C., solicitor, left estate of gross value £43,647.

The Times correspondent in a message from Toronto, of 17th April, says: The Ontario Legislature has given the third reading to the Bill prohibiting the publication of racing handbooks and betting information.

At the meeting of the Corporation of London, on 12th April, it was decided that, having regard to the provisibns of the Sex Disqualification (Removal) Act, 1919, the "custom of the City" should no longer be set up as the only reason for refusing admission of a married woman to the Freedom of the City.

Sir Thomas Hewitt, K.C., of The Hoe, Lynton, Devon, 9, Queen's-gate, S.W., and the Inner Temple, for twenty years chairman of the Ocean Accident and Guarantee Insurance Corporation, and formerly president of the Chamber of Arbitration of the City of London, High Sheriff of Devon, and Mayor of Kensington, who died on 8th January, aged eighty-five, left unsettled property of the gross value of £101,581 4s. 6d., with nett personalty £82,772 5s. 1d. He stated: I emphatically direct that my funeral shall be of an unostentatious kind, and I appeal to those surviving me not (as often happens) to allow reverence and obedience to these my express wishes to give place to pride or mere compliance with fashion. He left various articles to devolve in the families of his sons as heirlooms, including the dessert service presented to him after his defeat (in 1906) as Parliamentary candidate for North-West Cornwall.

The Times correspondent at Geneva, in a message of 17th April, says: The Council of the League of Nations met this morning under the presidency of Mr. Edward Wood. The following members were present: M. Hymans (Belgium), Senhor da Gama (Brazil), Mr. Tang Tsi-fu (China), Señor Quiñones de Leon (Spain), M. Gout (France), Signor Garbazzo (Italy), Mr. Adatci (Japan), M. Undén (Sweden), Don Alberto Guani (Uruguay). MM. Branting, Hanotaux and Salandra are expected to arrive in a few days. The Council have adopted a report on certain questions relative to the finances of the League brought forward by Señor Guani. It has been decided to postpone to the next session the election of the judge for the Court of International Justice in the place of the late Dr. Ruy Barbosa. In a public sitting this afternoon, the Council examined the questions relative to the frontier between Hungary and Czecho-Slovakia. Representatives of both parties were heard, and the Council will communicate its decision in the course of the present session. The question of the League's patronizing the Association for the Protection of Children has been postponed to a later session.

The Committee of experts appointed by the Financial Committee of the League of Nations to consider the problem of double taxation has, says *The Times* under "City Notes" (13th April), now reported to the Financial Committee. The members of the Committee were Professor Seligman (United States), Sir Josiah Stamp (Great Britain), Professor Bruins (Holland), and Professor Senator Einandi (Italy). The report should provide a basis on which national agreements can be reached on this question. It affords an example of the useful work in the cause of international financial relationships which is being done by the League of Nations through its financial section. The final conclusion of the Committee is that for the present countries on a comparative plane of economic equality could afford to adopt the principle that residence and not origin of income should be the controlling consideration in solving the problem. Where there are great difficulties in its adoption the Committee consider that a plan based on the classification and assignment of sources, modified by the division of the tax, would offer the best prospect of solution. Double taxation is much more important in the general comity of nations than we have hitherto imagined. The subject bristles with difficulties, and only very hard work made it possible to arrive at a unanimous decision.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday ..April 23	Mr. Jolly	Mr. Bloxam	Mr. Hicks Beach	Mr. Bloxam
Tuesday 24	More	Hicks Beach	Bloxam	Hicks Beach
Wednesday .. 25	Synge	Jolly	Hicks Beach	Bloxam
Thursday 26	Garrett	More	Bloxam	Hicks Beach
Friday 27	Bloxam	Synge	Hicks Beach	Bloxam
Saturday 28	Hicks Beach	Garrett	Bloxam	Hicks Beach

Date.	Mr. Justice Sargant.	Mr. Justice Russell.	Mr. Justice Astbury.	Mr. Justice P. O. Lawrence.
Monday ..April 23	Mr. Jolly	Mr. More	Mr. Synge	Mr. Garrett
Tuesday 24	More	Jolly	Garrett	Synge
Wednesday .. 25	Jolly	More	Synge	Garrett
Thursday 26	More	Jolly	Garrett	Synge
Friday 27	Jolly	More	Synge	Garrett
Saturday 28	More	Jolly	Garrett	Synge

Winding-up Notices.

JOINT STOCK COMPANIES.
LIMITED IN CHANCERY.

CREDITORS MUST SEND IN THEIR CLAIMS TO THE LIQUIDATOR AS NAMED ON OR BEFORE THE DATE MENTIONED.

London Gazette.—TUESDAY, April 10.

A. YOULDON & CO. LTD. May 19. Leonard Bevan, of Messrs. Kennedy, Smellie & Harrison, 4, Lloyd's avenue, E.C.3.

ZAPIGA NITRATE CO. LTD. May 24. William J. Welch, 27, Leadenhall-st., E.C.3.

London Gazette.—FRIDAY, April 13.

THE BAILDON PICTURE & CAFE CO. LTD. May 15. Reginald Hooper, 7 to 9, Old Bank-chmbrs., Cheapside, Bradford.

THE AIROSTYLE & LITHOS LTD. May 14. Thomas G. Piper, Bush Lane House, Cannon-st., E.C.4.

LONDON PRINTING INK CO. LTD. April 25. H. Forbes George.

MARLES STOPPER CO LTD. May 23. Mr. P. R. Mansfield, 10, Byward-st., E.C.3.

S. CHADWICK LTD. April 30. Louis Nicholas, 19, Castle-st., Liverpool.

J. P. CLARKSON & CO. LTD. April 30. Arthur N. Campbell, 7, Priestgate, Darlington.

LONDON BROKERS LTD. May 31. Charles L. Kettridge, 1 London Wall-bldgs.

Resolutions for Winding-up Voluntarily.

London Gazette.—TUESDAY, April 10.

Constantine, Donking & Lees Ltd.
Pilgrim & Son Ltd.
Hall, Noel & Co. Ltd.
John Robinson (Liverpool) Ltd.
Meteor Insurance Co. Ltd.
The Advance Motor Repair & Hire Co. (Raunds) Ltd.
Saxby & Farmer (India) Ltd.
A. Johansson & Co. Ltd.
"Wood" Line Ltd.
Miss Parr Ltd.
The Newfoundland and Labrador Fish & Oil Co. Ltd.
The Sheffield Silver Plate & Cutlery Co. Ltd.

F. C. Dawson Ltd.
British Isles Coasters Ltd.
Rolitic Patents Ltd.
Fallsworth Building Co. Ltd.
Cobbins Ltd.
Frank Long & Lloyd Ltd.
New Universal Motors Ltd.
The Hulburd Engineering Co. Ltd.
Rolls & Hunt Ltd.
Wolman's Ltd.
M.S.C. School of Motoring Ltd.
Fitch Hall & Montford Ltd.
British Legion (Gateshead & District Branch) Social Club & Institute Ltd.
Constantine & Donking Steamship Co. Ltd.
The Riba Tejo Proprietary Co. Ltd.
Nitrogen Fertilisers Ltd.
Randall Sloper & Co. Ltd.
Theo Slater (Indigo Cloths) Ltd.
The Zapiga Nitrate Co. Ltd.
J. E. Slack Ltd.
The Hathern Liberal Club Co. Ltd.
Holdsworth Bros. (London) Ltd.

London Gazette.—FRIDAY, April 13.

Yorkton No. 1 Syndicate Ltd.
Hendon Golf Club (1905) Ltd.
British Uralite Co. (1908) Ltd.
Kassa Ropp Tin Co. Ltd.
Ledward & Beckett Ltd.
Hammond & Co. Ltd.
J. C. Jones Ltd.
H. J. Dawe & Co. Ltd.
James Wilkinson (Skipton) Ltd.
Middletons (Walsall) Taxi Cab Co. Ltd.
Number 6 Boar's Head Hotel Mutual Investment Society Ltd.
The Forebridge Shoeing Forge Ltd.
Sacol Chemical Co. Ltd.
Evans & Tempier Ltd.
Foster, Martin & Co. Ltd.
A. E. Wheatly & Co. Ltd.
Fornecit Engineering Co. Ltd.
Harrison Grain Dryers Ltd.
Reversible Jerseys Ltd.
Phocol Ltd.
West Indian Estates Ltd.
Jordan & Wheeldon Ltd.
Weatheralls Ltd.
W. H. Cheadle & Waltho Ltd.
The Mitcham Margarine Co. Ltd.
The British Broken Hill Proprietary Co. Ltd.
London Brokers Ltd.
The River Mill Co. (Manchester) Ltd.
J. B. Watts & Son Ltd.
Universal Paper Productions Ltd.
Thomas Tilley & Co. Ltd.
A. Youldon & Co. Ltd.
Edward Graham Ltd.
A. H. Hale & Co. Ltd.
F. W. Disney Ltd.

Bankruptcy Notices.

RECEIVING ORDERS.

London Gazette.—TUESDAY, April 10.

BALDERSTONE, HERBERT, Colne, Lancs., Cloth Merchant. Burnley. Pet. April 7. Ord. April 7.
BATTERHAM, EDWARD, Westcliff-on-Sea. Chelmsford. Pet. March 13. Ord. April 5.
COTTERELL, CHARLES H., Tipton, Baker. Dudley. Pet. April 5. Ord. April 5.
DAVIDSON, ISAAC, Weymouth-st., Portland-pl., Financier. High Court. Pet. April 7. Ord. April 7.
DEWBERY, JOHN, and DEWBERY, ANNE, Norwich, Boot and Shoe Manufacturers. Norwich. Pet. March 19. Ord. April 6.
DONALDSON, JOSEPH, Dewsbury, Dentist. Nottingham. Pet. Dec. 6. Ord. April 5.
DUNNING, JOHN W., Hurworth-le-Skerne, Durham, Farmer. Stockton-on-Tees. Pet. March 16. Ord. April 6.
ETNON, HENRY, Mountain Ash, Provision Merchant. Aberdare. Pet. April 7. Ord. April 7.
FORREST, HUGH, Blackburn, Reed Manufacturer. Blackburn. Pet. March 27. Ord. April 6.
GOLDBERG, MORRIS, West End-lane, N.W., Tailor. High Court. Pet. April 5. Ord. April 5.
GOODING, CHARLES, Leyton. High Court. Pet. March 2. Ord. April 4.
HANDEL, FRANK, Taunton, Builder, Taunton. Pet. March 28. Ord. April 7.
HENRY, JAMES, Eddington, nr. Herne Bay. Canterbury. Pet. March 7. Ord. April 7.
HICKIN, FRANK, Kirby Bellars, Leicester. Leicester. Pet. April 7. Ord. April 7.
HUGHES, WILLIAM, Norwich, Bookseller. Norwich. Pet. April 5. Ord. April 5.
INGHAM, HORACE, Leeds, Jeweller. Leeds. Pet. April 6. Ord. April 6.
JENKINS, LESLIE C., Birmingham, Merchant Tailor. Birmingham. Pet. April 5. Ord. April 5.
JONES, WILLIE T., Cardiff, Painter. Cardiff. Pet. April 5. Ord. April 5.
KEMBER, CHARLES, Marden, Kent, Smallholder. Maidstone. Pet. April 6. Ord. April 6.
KERSHAW, ADA A., Rochdale. Rochdale. Pet. March 19. Ord. April 5.
LAKIN, JOHN, Dosthill, Warwick, Farmer. Birmingham. Pet. March 16. Ord. April 6.
LAMBERT, JOHN, Derby, Brush Manufacturer. Derby. Pet. March 15. Ord. April 5.
LEONARD, ADA, Scunthorpe, Lincs., Costumier. Great Grimsby. Pet. April 5. Ord. April 5.
LLOYD, FREDERICK G., Golden-sq., Theatrical Touring Companies Proprietor. High Court. Pet. April 6. Ord. April 6.
LOCKIE, ALVA J., Derby, Grocer. Derby. Pet. April 6. Ord. April 6.
LONG, MICHAEL A., Stowmarket, Farmer. Bury St. Edmunds. Pet. March 23. Ord. April 5.
MATTHEWS, ALFRED J., Gosport, Market Gardener. Portsmouth. Pet. March 28. Ord. March 28.
MOODY, ALFRED J., Aston, Birmingham, Builder. Birmingham. Pet. April 6. Ord. April 6.
PEMBERTON JOHN A., Clanfield, Hants, Farmer. Portsmouth, Pet. March 27. Ord. March 27.
RAWDING, GEORGE W., Sheffield, Wholesale Confectioner. Sheffield. Pet. April 5. Ord. April 5.
ROBB, CHARLES A., Saltley, Birmingham, Engineer. Birmingham. Pet. March 21. Ord. April 6.
SHARPE, GRANVILLE C., Scofton, Notts, Farmer. Sheffield. Pet. April 6. Ord. April 6.
SHELLEY, CHARLES, and JAMES, SYDNEY M., Brighton, Furriers. Brighton. Pet. April 4. Ord. April 4.
SIDEBOTTOM, HENRY, Cheadle Hulme, Chester, Engineer. Stockport. Pet. March 3. Ord. April 5.
SILLS, FREDERICK J., Luton, Straw Hat Manufacturer. Luton. Pet. April 5. Ord. April 5.
SMYTH, HERBERT G. W., Brighton, Motor Engineer. Brighton. Pet. March 5. Ord. April 5.
SPRINGETT, ARTHUR W., Doncaster, Teacher of Dancing. Sheffield. Pet. April 5. Ord. April 5.
THOMAS, LOUIS, Amroth, Grocer. Haverfordwest. Pet. April 5. Ord. April 5.
THORPE, JOSEPH H., Studham, nr. Dunstable, Farmer. Luton. Pet. March 16. Ord. April 5.
TRUMP, GEORGE E., Pontnewydd, Carpenter. Newport (Mon.). Pet. April 6. Ord. April 6.
VORSEY, NATHAN, New Broad-st., General Merchant. High Court. Pet. March 5. Ord. April 5.
WILDERSPIN, GEORGE A., Warboys, Hunts, Farmer. Peterborough. Pet. April 5. Ord. April 5.
WILLIAMS, GLADYS, St. Albans, Herts, Housekeeper. Exeter. Pet. Jan. 15. Ord. April 6.
WINSON, JOHN, Salford. Salford. Pet. March 6. Ord. April 5.

London Gazette.—FRIDAY, April 13.

ALEXANDER, JOHN C., Birmingham, Motor Engineer, Birmingham. Pet. April 10. Ord. April 10.
BEAULAH, JOHN W., Billinghay, Lincs., Farmer. Boston. Pet. April 7. Ord. April 7.
BEAVEN, HENRY G., Clifton, Bristol. General Contractor. Bristol. Pet, April 9. Ord. April 9.
BROWN, MARGARET Cardiff. Cardiff. Pet. March. 26. Ord. April 10.
BURDEN, JAMES W., Birmingham, Steam Gauge Maker. Birmingham. Pet. April 11. Ord. April 11.
BURNS, ALFRED Alderley Edge, Chester, Coal Merchant. Macclesfield. Pet. April 10. Ord. April 10.
CARNELL, ALFRED, and BOYD, MAUD M., Oldham, Confectioners. Oldham. Pet. March 24. Ord April 6.
CLARKE, ERNEST A., Luton. Luton. Pet. Feb. 19. Ord. April 9.
COLLEY JOHN P. Wragby, near Wakefield, Grocer. Wakefield. Pet. April 9. Ord. April 9.
COOPER, PHILIP H., Earl's Court-rd., Company Director. High Court. Pet. Feb. 7. Ord. April 10.
COLLINS JEROME J., Diggle, near Oldham. High Court. Pet. Feb. 27. Ord. April 10.
COLLINGS, HERBERT G., Plymouth, Wholesale Confectioner. Plymouth. Pet. April 9. Ord. April 9.
DAVIES, RICHARD, Morriston, Swansea, Draper. Swansea. Pet April 10. Ord. April 10.
DEAN, FREDERICK, Kidsgrove, Staffs, Joiner. Hanley. Pet. April 7. Ord. April 7.
DICKINSON, D. H., Stoke Newington. High Court. Pet. March 6. Ord. April 10.
FORSTER, WILLIAM, Darnall, Sheffield, Farmer and Licensed Victualler. Sheffield. Pet. March 20. Ord. April 11.
FOSTER, FREDERICK Southwaite, Cumberland, Gamekeeper. Carlisle. Pet. April 9. Ord. April 9.
GOSLEY, GEORGE, Leeds. Leeds. Pet. April 10. Ord. April 10.
HILL, B., Kingston-upon-Hull, Boot Retailer. Kingston-upon-Hull. Pet. March 28. Ord. April 10.
HYMANS, STANLEY W., Bradford, Textile Manufacturer. High Court. Pet. April 10. Ord. April 10.
HUSSEY, HARRY, Walsall, Professional Golfer. Walsall. Pet. April 11. Ord. April 11.
INMAN, WILLIAM A., Bromley-by-Bow, Coal Merchant. High Court. Pet. March 12. Ord. April 11.
KENT, CHARLES J., Preston, Corset Maker. Preston. Pet. April 10. Ord. April 10.
KERSHAW, WILLIAM K., Lymm, Chester, Commission Agent. Liverpool. Pet. April 10. Ord. April 10.
KOSMINSKY, SAMUEL, Beech-court, Beech-st., Costume Manufacturer. High Court. Pet. March 12. Ord. April 11.
LETHBRIDGE, ROSINA F., LETHBRIDGE, GEORGE H., LETHBRIDGE, ROSINA M., LETHBRIDGE, PERCY A., LETHBRIDGE, WILLIAM E., Devonport, Boot and Shoe Retailers. Plymouth. Pet. April 9. Ord. April 9.
LOCKETT, JOHN C., Jermyn-st., S.W., Restaurant Caterer. High Court. Pet. April 9. Ord. April 9.
MACDONALD, GEORGE, Bethesda, Carnarvon. Bangor. Pet. Jan. 11. Ord. April 9.
THE MANCHESTER WASTE CO., Ardwick, Manchester. Manchester. Pet. Feb. 10. Ord. April 9.
MACDONALD, GEORGE, Bethesda, Carnarvon. Bangor. Pet. Jan. 11. Ord. April 9.
MANN & PHILLIPS, Barbican, Mantle Manufacturers. High Court. Pet. March 1. Ord. April 11.
MANSELL, DUDLEY A. H., Great Tower-st. High Court. Pet. March 12. Ord. April 11.
MASON, ARTHUR W., Sutton-in-Ashfield, Notts, Boot Repairer. Nottingham. Pet. April 10. Ord. April 10.
MORTON, ROWLAND, Macclesfield, Boot Dealer. Macclesfield. Pet. March 27. Ord. April 7.
MURRAY, WILLIAM, Laycock, near Keighley, Farmer. Bradford. Pet. April 10. Ord. April 10.
NEALE, MARY M., Birmingham, Costumier. Birmingham. Pet. March 27. Ord. April 9.
NEVILLE, GEORGE, Bishopsgate. High Court. Pet. Nov. 23. Ord. April 11.
NOEL, CYRIL N., Cardiff, Commission Agent. Cardiff. Pet. March 15. Ord. April 6.
OSBORNE, GEORGE, Bedford, Market Gardener. Bedford. Pet. April 9. Ord. April 9.
OVENDEN, EVA, Kingston-on-Thames, Dressmaker. High Court. Pet. April 11. Ord. April 11.
PARKER, ERNEST P. E., Lordship-lane, Dulwich, Tobacconist. High Court. Pet. April 10. Ord. April 10.
PAYNTER, C., Llangennech, Carmarthen. Carmarthen. Pet. Feb. 24. Ord. April 10.
POOL, GEORGE T., Stockton-on-the-Forest, Yorks., Farm Horseman. York. Pet. April 10. Ord. April 10.
REDDER, CHARLES A., Huddersfield, Motor Haulage Contractor. Huddersfield. Pet. March 26. Ord. April 9.
REES, THOMAS, Llandebie, Carmarthenshire, Farmer. Carmarthen. Pet. April 4. Ord. April 4.
RICHES, WILLIAM A., Blyth, Carriage Proprietor. Newcastle-upon-Tyne. Pet. April 10. Ord. April 10.
ROGERS, WILLIAM J., Stratford, Carman and Contractor. High Court. Pet. April 10. Ord. April 10.
SANDIFORD, HENRY, Mandeville, Somerset, Innkeeper. Yeovil. Pet. April 9. Ord. April 9.
SHINEGOLD, ELEAZER, Stoke Newington, Paper Agent's Clerk. High Court. Pet. Jan. 26. Ord. March 29.
SWAIN, EDWARD W., Canterbury, Licensed Victualler. Canterbury. Pet. April 9. Ord. April 9.
SWIFT, WILLIAM, Prescot, Lancs. Liverpool. Pet. Jan. 23. Ord. April 11.
TAYLOR, TOM H., Filey, Plumber. Scarborough. Pet. April 9. Ord. April 9.
TRENT, CHARLES, Erith, Engineer. Rochester. Pet. April 10. Ord. April 10.
TUTT, CHARLES R., Rochester, Baker. Rochester. Pet. Jan. 23. Ord. April 9.
WHATMOUGH, JOHN, Rochdale, Master Butcher. Salford. Pet. March 23. Ord. April 11.
WHITWORTH, ROLAND, Newcastle-upon-Tyne, Draper. Newcastle-upon-Tyne. Pet. March 23. Ord. April 7.
WILLOUGHBY, GEORGE H., Manchester, Architect. Manchester. Pet. March 24. Ord. April 9.
WILSON, CHARLES E. S., Warley, Staffs., Working Jeweller. West Bromwich. Pet. April 10. Ord. April 10.
WOOD, JOHN C., Worcester, Innkeeper. Worcester. Pet. April 11. Ord. April 11.